TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible].

No. [illegible] 245.

CHARLES E. BARRETT, PLAINTIFF IN ERROR,

vs.

THE STATE OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED MARCH 8, 1911.

(22,576.)

(22,570.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 949.

CHARLES E. BARRETT, PLAINTIFF IN ERROR,

vs.

THE STATE OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

INDEX.

	Original.	Print
Caption	1	1
Transcript from Sullivan circuit court	2	1
Placita	2	1
Order on mandate sustaining demurrer to special plea	2	1
Amended affidavit	2	2
Exception to amended affidavit	4	3
Motion to quash amended affidavit	4	3
Order overruling motion to quash	6	5
Demurrer to affidavit	6	5
Order overruling demurrer	8	6
Plea in abatement	8	6
Demurrer to plea in abatement	12	9
Order sustaining demurrer	13	10
Judgment	13	10
Appeal and allowance	13	10
Appeal bond	13	10
Præcipe for transcript	14	11
Notice of appeal	16	12
Waiver of notice, &c	16	12
Clerk's certificate	17	13
Assignment of errors	18	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 25, 1911.

	Original.	Print
Order submitting cause	20	14
Order filing brief of appellant	21	14
Order filing brief of appellee	22	14
Opinion	24	15
Judgment	29	18
Petition for writ of error	32	19
Exhibit A—Act to regulate the width of entries in coal mines, &c., approved March 9, 1907	35	20
Allowance of writ of error	36	21
Order granting writ of error	37	21
Writ of error	40	22
Bond on appeal	43	23
Citation and service	45	24
Assignment of errors	48	25
Clerk's certificate	52	26

1 STATE OF INDIANA,
In the Supreme Court:

Be it remembered that heretofore to-wit: on the 18th day of July, 1910, the same being the 49th Judicial Day of the May Term, 1910, of said Supreme Court, Charles E. Barrett, the Appellant herein *and* files in the office of the Clerk of said Supreme Court of said State of Indiana a transcript of the record and proceedings had in the Sullivan Circuit Court of said State of Indiana in a cause wherein Charles E. Barrett was the Appellant, and the State of Indiana was the Appellee, together with an assignment of error and notice to the Prosecuting Attorney by Appellant.

2 *Placita.*

Pleas Before the Honorable Charles E. Henderson, Judge of the Fourteenth Judicial Circuit of the State of Indiana and ex-Officio Judge of the Sullivan Circuit Court, at the May Term, 1909, of said Court, Held at the Court House in the City of Sullivan, in Sullivan County, Indiana, Commencing on the 5th Monday of May, in the Year of Our Lord One Thousand Nine Hundred Nine.

#5242.

STATE OF INDIANA
vs.
CHARLES E. BARRETT.

Violating Mining Law.

Be it remembered that on the 1st day of June, 1909, the same being the 2nd Judicial day of the said May term, 1909, of said Court held at the time and place and before the Honorable Judge aforesaid the following proceedings by the said Court were had in said cause, to-wit:

Comes now again the State of Indiana by Walter F. Wood, Prosecuting Attorney, and comes also the defendant in his own proper person and now in pursuance of the mandate of the Supreme Court in this cause, the Court sustains the Demurrer of the State to the Special Plea of the Defendant, to which ruling of the Court Defendant objected and excepted at the time.

Thereupon the State by leave of Court amends the affidavit on file herein against the Defendant, to which the Defendant objected and excepted at the time, and thereupon the State refiles said affidavit as amended in these words to-wit:

Amended Affidavit.

STATE OF INDIANA,
Sullivan County, ss:

In the Sullivan Circuit Court.

THE STATE OF INDIANA
vs.
CHARLES E. BARRETT.

Violating Mining Law.

Walter F. Wood being duly sworn according to law upon his oath says: that at and in Sullivan County, in the State of Indiana on the 14th day of July 1908 one Charles E. Barrett was then and there the operator of a coal mine at and in Sullivan County, in said
3 State of Indiana, known as Vandalia Mine No. 10 which mine then and there employed more than ten men, and which mine was then and there on said day and had been for a long time prior thereto operated as a coal mine under the order and direction of the defendant and in which mine at and during all such time laborers drivers and mineers worked; that on and prior to said 14th day of July 1908 the said defendant did then and there cause to be made, dug and constructed an entry and t-ackway in said coal mine upon and along which a continuous mine car track was laid upon which loaded cars of coal, and empty coal cars were hauled by mules and motors under the charge of drivers, and along which entries drivers were and are required to drive with said mine cars: and said defendant did then and there wrongfully and unlawfully fail to provide in said entries in said mine on either *said* of said mine car track, a continuous space of two feet measured from said car track rail free from props, loose slate, debris and other obstruction so that the drivers could get away from the cars run upon said track in the event of wreck, collision or other accident, contrary to the form of the statutes of the State of Indiana in such cases made and provided and against the peace and dignity of the State of Indiana.

WALTER F. WOOD.

Sworn to before me and subscribed in my presence this 1st day of June A. D. 1909.

ARTHUR E. DE BAUN,
Clerk Sullivan Circuit Court.

Examined and duly approved by me this 1st day of June A. D. 1909.

WALTER F. WOOD,
Prosecuting Attorney.

Filing marks on amended affidavit: No. 5242. In the Sullivan Circuit Court. The State of Indiana vs. Charles E. Barrett. Violating Mining Law—Amended Affidavit. Filed June 1, 1909. Arthur E. De Baun, Clerk. Walter F. Wood, Pros. Att'y.

4 *Exceptions to Filing Affidavit.*

To the filing of which amended affidavit, the Defendant then and there objected, but his objections were by the Court overruled and to which ruling the Defendant then and there objected and excepted.

Motion to Quash Affidavit.

Thereupon the Defendant filed his motion in writing to quash said Affidavit which motion is in the words and figures as follows, to-wit:

STATE OF INDIANA,
Sullivan County, ss:

In the Sullivan Circuit Court.

#5242.

STATE OF INDIANA
vs.
CHARLES E. BARRETT.

Motion to Quash Affidavit.

The Defendant in the above entitled cause now comes and moves the Court to quash the amended affidavit filed against him herein and which he is required to answer and for reason says.

First. That said amended affidavit does not state facts sufficient to constitute a cause of action against him.

Second. That said amended affidavit does not state facts sufficient to charge a public offense.

Third. That said amended affidavit attempts to charge this defendant with a violation of an alleged act of the General Assembly of the State of Indiana, approved March 9" 1907 (Acts 1907 page 334) and such act of the legislature is in violation of the Constitution of the State of Indiana in this (*a*) that by said Act privileges and immunities are attempted to be granted to one class of citizens which are not granted alike to all citizens. (*b*) that by said act the taking effect thereof is delegated to a certain class of citizens, and such alleged Act does not purport to take effect in pursuance of the Constitution of the State of Indiana.

Fourth. That said affidavit has for its foundation an alleged Act of the General Assembly of the State of Indiana approved March 9" 1907 which Act is as follows:

5 CHAPTER 197.

An Act to regulate the width of entries in coal mines, providing for an unobstructed space in such entries, providing penalties and repealing all laws in conflict.

S. 330, Approved March 9", 1907.

SECTION 1. Be it enacted by the General Assembly of the State of Indiana, that it shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana, to make dig, construct, or cause to be made, dug or constructed any entry or trackway after the taking effect of this Act, in any coal mine in the State of Indiana, where drivers are required to drive with mine car or cars unless there shall be a space provided on one or both sides continuously of any track or tracks measured from the rail, in any such entry of at least two (2) feet in width, free from any props, loose slate, debris or other obstruction so that the driver may get away from the car or cars and track in event of collision, wreck or other accident. It shall be unlawful for any employee, person or persons to knowingly, purposely or maliciously place any obstruction within said space as herein provided: Provided, that the Geological veins of Coal numbers three and four commonly known as the lower and upper veins in the block coal field of Indiana shall be exempt from the provisions of this act.

SECTION 2. Any such owner, lessee, operator, person or persons, violating any of the provisions of this Act shall be guilty of misdemeanor and upon conviction thereof shall be fined in any sum not to exceed two hundred dollars and to which fine may be added imprisonment in the County Jail, not to exceed sixty days.

SECTION 3. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed."

And which Act of the said Legislature of the State of Indiana is in violation of the Constitution of the United States in this (*a*) That said act grants to certain citizens rights and privilegec not

6 given or granted to all the citizens of all the State.

(*b*) That said act deprives one class of citizens of rights and property and exempts other citizens of the same class.

(*c*) That said act denies to the Defendant who is within the jurisdiction of the Court the equal protection of the law, and grants to one class of citizens in the State of Indiana rights and privileges not given or granted to this defendant.

Wherefore the defendant asks that said affidavit be quashed and that he be not required to further answer herein.

CHARLES E. BARRETT,
Defendant.

JOHN T. & WILL H. HAYS,
Of Counsel.

No. 5242. Sullican Circuit Court. State of Indiana vs. Charles E. Barrett. Motion to Quash Affidavit. Filed June 1, 1909. Arthur E. De Baun, Clerk. Charles E. Barrett, Pro. Se.

Motion to Quash Affidavit Overruled and Appellant Excepts.

And said motion being submitted to the Court and the Court being fully advised in the premises overrules said Motion to which ruling of the Court the Defendant then and there at the time objected and excepted.

And afterwards, towit, on the 4th day of January, 1910, the same being the 2nd Judicial day of the January term, 1910, of said Court begun, held and continued at the Court House in Sullivan — Indiana commencing on the 3rd day of January, 1910, before the Honorable Judge aforesaid the following further proceedings were had in said cause to-wit:

Appellant Demurs to Affidavit.

Comes now again the State of Indiana, by attorney James M. Hudson and comes also the Defendant in his own behalf and by attorneys John T. & Will H. Hays into open Court and Defendant files Demurrer to affidavit, which demurrer is in the words and figures as follows, to-wit:

STATE OF INDIANA,
Sullivan County:

Sullivan Circuit Court, January Term, 1910.

7 STATE OF INDIANA
vs.
CHARLES E. BARRETT.

Demurrer to Affidavit.

And the said Charles E. Barrett, in his own proper person, cometh into the Court here, and having heard the said affidavit read says that the said affidavit and the matters therein contained in manner and form as the same are therein stated and set forth, are not sufficient in law, and the said Charles E. Barrett is not bound by the law of the land to answer the same; that the same are not sufficient in law in this:—That the said affidavit is based upon an alleged act of the General Assembly of the State of Indiana entitled "An Act to regulate the width of entries in Coal mines, providing for an unobstricted space in such entries providing penalties and repealing all laws in conflict." Approved March 9 1907; that said pretended Act of the Legislature is in violation of the Constitution of the State of

Indiana in that said Act gives to the Operators and persons engaged in the mining of coal in geological veins of coal and numbers three and four and known in the block coal field as "upper" and "lower" vein rights and privileges not given nor granted to other persons engaged in the mining of coal under similar and like conditions; and that said pretended Act of the said General Assembly of the State of Indiana is in violation of the Constitution of the United States in this:—That by said Act, rights, privileges and immunities are given and granted one class of citizens, to-wit: Operators and persons engaged in the mining of coal from geological veins three and four, known in the block coal field of the State of Indiana as "upper" and "lower" veins not given to other citizens of the State engaged in the mining of coal from the same geological veins; and this he is ready to verify.

Wherefore, for want of a sufficient affidavit in this behalf the said Charles E. Barrett prays judgment, and that by the Court he
8 may be dismissed and discharged from the said premises in said affidavit specified.

CHARLES E. BARRETT.

JOHN T. & WILL H. HAYS,
Attorneys for Defendant.

No. 5242. Sullivan Circuit Court. January Term, 1910. State of Indiana vs. Charles E. Barrett. Demurrer to affidavit. Filed Jan. 4, 1910. Arthur E. De Baun, Clerk. John T. & Will H. Hays, Attorneys for Defendant.

Demurrer to Affidavit Overruled and Appellant Excepts.

And said demurrer is by the Court overruled, and Defendant excepts thereto. And Defendant now files Plea in Abatement which Plea is in the words and figures as follows, to-wit:

Appellant's Plea to Affidavit.

STATE OF INDIANA,
Sullivan County, ss:

In the Sullivan Circuit Court.

STATE OF INDIANA
vs.
CHARLES E. BARRETT.

Defendant's Plea.

1st Paragraph.

The Defendant, for plea and answer to the affidavit filed herein against him, says and avers: that said affidavit and the proceedings

thereunder in this case is based upon and being had under and Act of the General Assembly of the State of Indiana, entitled "An Act to regulate the width of entries in coal mines, providing for an unobstricted space in such entries, providing penalties and repealing all laws in conflict,"

Approved March 9" 1907.

Defendant avers that at the date alleged in the affidavit he was the Secretary of Vandalia Coal Company, and one of the Executive Committee of such Company, and that on the day alleged and for some time prior thereto said Vandalia Coal Company was the owner of a coal mine situate and being in Sullivan County Indiana, and known as Vandalia Mine No. 10; and that on the day alleged in such affidavit and for some time prior thereto said mine was being
9 operated by said Vandalia Company under the orders and direction of the officers thereof, and under the order and direction of the Executive Committee of said Company, and of which officers this defendant was one, and of which Executive Committee this defendant was a member.

Defendant further avers that on the day and date alleged in said affidavit the said Vandalia Coal Company was engaged in the mining of coal in said mine, but it was mining such coal from what is known as Geological vein of coal number four and was mining no other coal in said mine and was operating in no other vein of coal in said mine.

Defendant further avers that in the State of Indiana veins of coal have a well known Geological number, the lowest vein being number one, and the veins are numbered upwards; that in some parts of the State of Indiana part only of such veins are found, and in parts of the State two or more veins are found; that in Sullivan County, Indiana, there are three or more veins of coal, viz: numbers three, four and five; that in other counties there are veins four, five and six, and in others five, six and seven; that in some of the Counties a vein of coal is found known as block or semi-block coal but the same is so found in said Geological veins number three and four, and it not fou-d in any other vein; that by custom in such Counties where block or semi-block coal is so found, the *such* coal being in said Geological veins number- three and four, is called "upper" and "lower" vein, but such designation does not mean coal found in any other vein than Geological veins number three and four; and that Geological veins of coal number three and four are identical with what is known as "upper" and "lower" veins in the field wherein block and semi-block coal is found.

Defendant further avers that under and by virtue of said Act of the General Assembly of the State of Indiana, aforesaid Geological veins of coal numbers three and four are excepted from the operation of such Act of the General Assembly, aforesaid and as Vandalia Coal Company on the date alleged in the affidavit was mining coal
10 from said Geological vein of coal number four, as aforesaid, and from no other vein of coal, it was not required to comply with the provisions of said Act, and hence in directing the operation of such mine and in operating the same this defendant did not vio-

late any law, and he is not guilty as therein in said affidavit alleged, and he demands that he be discharged.

Second Paragraph.

And for second and further plea and answer herein to the affidavit filed herein against him, this defendant avers; that said affidavit is based upon an Act of the General Assembly of the State of Indiana, entitled "An Act to regulate the width of entries in coal mines, providing for an unobstructed space in such entries, providing penalties and repealing all laws in conflict.

Approved March 9" 1907.

This defendant further says that he should not be required to respond herein, or make further defense herein to the charge contained in said affidavit, because, he says: that Vandalia Coal Company, a corporation organized and existing under the laws of the State of New Jersey and duly authorized to do and transact business in the State of Indiana, is the owner of the coal mine mentioned and described in said affidavit; that this defendant is the Secretary of said Company, and one of its Executive Committee; that said mine is operated under the order and direction of the officers of said Vandalia Coal Company, and under the order and direction of the Executive Committee of said Corporation that it is provided in said Act of the General Assembly of the State of Indiana that said Act should not apply to Geological veins of coal numbers three and four, and which veins are known in the block coal fields of Indiana as "upper" and "lower" veins; and defendant further avers that on the date alleged in the affidavit said Vandalia Coal Company was engaged in mining coal from its mine in Sullivan County, Indiana, known as Vandalia Mine No. 10, from Geological vein number four, and was mining coal from no other vein; that said Act of the General Assembly of
11 the State of Indiana, aforesaid is void, for the reason that it is in conflict with the Constitution of the State of Indiana in this; that said Act gives to the operators and persons engaged in the mining of coal in Geological veins of coal numbers three and four, and known in the block coal fields as "upper" and "lower" vein, rights and privileges not given nor granted to other persons engaged in the mining of coal, and said Act of the General Assembly of the State of Indiana, is not uniform in its operation throughout the State of Indiana, and said Act of the General Assembly of the State of Indiana is in violation of the Constitution of the United States in this: that by said Act, rights, privileges and immunities are given and granted one class of citizens, to-wit: operators and persons engaged in the mining of coal from Geological veins three and four, known in the block coal fields as upper and lower veins, not given to other citizens of the State engaged in the mining of coal from the same Geological vein, and that this defendant should not be called upon to further answer herein, and for the reason herein set forth he says he is not guilty as charged in said affidavit, and for the further reason that there is no valid or legal Statute or Act of the General

Assembly of the State of Indiana under which this action is based, and he therefore demands that he be discharged.

CHARLES E. BARRETT, *Defendant.*

Charles E. Barrett being duly sworn according to law, upon his oath says, that he is the defendant herein; that he has read the foregoing two paragraphs of answer; that he believes the matters and things therein alleged and set forth to be true in substance and in fact.

CHARLES E. BARRETT.

Subscribed and sworn to before me in my presence this 16th day of December, 1909.

[SEAL.] MARGARET O. PITTS,
Notary Public.

My Commission expires Jan. 8 1911.

12 No. 5242. Sullivan Circuit Court. State of Indiana vs. Charles E. Barrett. Defendant's Plea. Filed Jan. 4, 1910. Arthur E. DC Baun, Clerk. Barrett & Barrett. John T. & Will H. Hays Att'ys for Def't.

And afterwards to wit on the 17th day of June, 1910, the same being the 17th Judicial day of the May term, 1910, of said Court, begun, held and continued at the Court house in Sullivan Indiana, commencing on the 30th day of May, 1910, before the Honorable Judge aforesaid the following further proceedings were had in said cause to wit:

Comes now again the State of Indiana, by her attorney James M. Hudson and comes also the Defendant by John T. & Will H. Hays attorneys and in person in his own behalf, into open Court and the State of Indiana, files demurrer to each paragraph of defendant's Plea in abatement, which demurrer is in the words and figures as follows, to-wit:

STATE OF INDIANA,
County of Sullivan, ss:

In Sullivan Circuit Court, May Term, 1910.

STATE OF INDIANA
vs.
CHARLES E. BARRETT.

Demurrer of Appellee to Each Paragraph of Appellant's Plea.

Comes now the Plaintiff in above entitled cause of action and demurs separately and severally to the first and second paragraph- of Defendant's Plea and answer herein and says that neither paragraph of said Plea states facts sufficient to constitute a defense to Plaintiff's clause of action.

JAMES M. HUDSON,
Pros. Att'y.

No. 5242. Sullivan Circuit Court. May Term, 1910. State of Indiana vs. Charles E. Barrett. Demurrer to Defendant's Plea. Filed June 17, 1910. Arthur E. De Baun, Clerk. James M. Hudson, Pros. Att'y.

13 *Ruling of Court to Appellant's Plea and Exceptions.*

And said demurrer is by the Court sustained as to each paragraph thereof and defendant excepts as to each ruling. And now Defendant wa-ves arraignment and pleads not guilty to the charge as set out in the affidavit herein.

And this cause being now at issue upon said plea, the same is submitted to the Court for trial, finding and judgment without the intervention of a jury.

And the Court having heard the evidence and being duly advised in the premises, finds the defendant guilty as charged and assesses his punishment at a fine of $10.00 to which defendant excepts.

Judgment.

It is therefor- considered adjudged and decreed by the Court that defendant herein is guilty as charged and that he do make his fine to the State of Indiana in the penal sum of Ten ($10.00) Dollars and that Defendant pay the Costs herein taxed at $——.

Appeal Prayed and Granted.

And now Defendant prays an appeal to the Supreme Court of the State of Indiana which appeal is by the Court granted and Bond fixed in the sum $50.00. And said Defendant now tenders Ira Glidden as surety on appeal Bond which surety is by the Court approved and now defendant files appeal Bond in the sum of $50.00 which is in the words and figures as follows, to-wit:

Appeal Bond.

Know all men by these presents, That we Charles E. Barrett and Ira Glidden are held and firmly bound unto the State of Indiana in the penal sum of Fifty Dollars for the payment whereof well and truly to be made and done we bind ourselves our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this 17th day of June A. D. 1910.

Whereas, The said State of Indiana lately, to-wit: on the 17″ day of June, 1910, in the Circuit Court of the County of Sullivan in the State of Indiana, recovered judgment against said Charles

14 E. Barrett for the sum of Ten Dollars and costs; and,

Whereas, The said Charles E. Barrett has Appealed therefrom to the Supreme Court of the State of Indiana.

Now, Therefore; The Condition of This Obligation is to the effect following, to-wit: that if the said appellant will duly prosecute his said appeal, and abide by and pay the judgment and costs which may be rendered or affirmed against *them*, then this obligation is to be void, otherwise to remain in full force and effect.

CHARLES E. BARRETT. [SEAL.]
IRA GLIDDEN. [SEAL.]

Bond approved in open Court June 17" 1910.

CHARLES E. HENDERSON, *Judge.*

Appeal Bond filed June 17 1910.

ARTHUR E. DE BAUN, *Clerk.*

And said Bond is by the Court approved.
Record read and signed in open court this 17th day of June, 1910.

CHARLES E. HENDERSON, *Judge.*

And afterwards towit on the said 17th day of June, 1910, the following further proceedings and entry were had and made in said cause to-wit:

Be it remembered that on this 17th day of June, 1910, the Defendant Charles E. Barrett by his attorneys John T. & Will H. Hays filed in the office of the Clerk of the Sullivan Circuit Court in the State of Indiana his præcipe, which præcipe is in the words and figures as follows, to-wit:

STATE OF INDIANA,
Sullivan County, ss:

In the Sullivan Circuit Court.

#5242.

STATE OF INDIANA
vs.
CHARLES E. BARRETT.

Præcipe for Transcript.

To the Clerk of the Sullivan Circuit Court:

You are hereby notified that the Defendant in the above entitled cause has appealed from the judgment of the Sullivan Circuit
15 Court to the Supreme Court of the State of Indiana, and you are hereby requested to make out and deliver to the defendant a full, true and complete transcript of the amended affidavit filed on June 1st 1909, in the above cause and also a full, true and complete transcript of all entries of record and papers filed in said cause since the filing of said amended affidavit, and you will attach

to such transcript the Notice of Appeal served on the Prosecuting Attorney of the Sullivan Circuit Court and the Clerk of said Sullivan Circuit Court.

CHARLES E. BARRETT,
Defendant.
JOHN T. & WILL H. HAYS,
Att'ys for Defendant.

No. 5242. State of Indiana vs. Charles E. Barrett. Præcipe. Filed June 17, 1910. Arthur E. De Baun, Clerk.

16 STATE OF INDIANA,
Sullivan County, ss:

In the Sullivan Circuit Court.

No. 5242.

STATE OF INDIANA
vs.
CHARLES E. BARRETT.

Notice of Appeal.

To James M. Hudson, Prosecuting Attorney of the Fourteenth Judicial Circuit and Ex-Officio Prosecuting Attorney of the Sullivan Circuit Court and Arthur E. De Baun, Clerk of the Circuit Court of Sullivan County, Indiana:

You and each of you are separately and severally notified that Charles E. Barrett Defendant in the above entitled cause has appealed to the Supreme Court of the State of Indiana from the judgment of the said Sullivan Circuit Court entered on the 17th day of June, 1910.

Dated this June 17" 1910.

CHARLES E. BARRETT,
Defendant.
JOHN T. & WILL H. HAYS,
Att'ys for Defendant.

Appearance of Appellee to Appeal.

The undersigned each acknowledge service of the above notice and waive all further notice of said appeal and enter the appearance of the State of Indiana to such appeal.

June 17" 1910.

JAMES M. HUDSON,
Prosecuting Attorney.
ARTHUR E. DE BAUN,
Clerk Sullivan Circuit Court.

Filed Jul- 18, 1910.
EDWARD V. FITZPATRICK, *Clerk.*

17 STATE OF INDIANA,
County of Sullivan, ss:

Clerk's Certificate to Record.

I, Arthur E. De Baun, Clerk of the Sullivan Circuit Court of Sullivan County, Indiana, do hereby certify the foregoing and attached to be a full, true and complete transcript of the Amended Affidavit filed on June 1st 1909, and of all entries of record and papers filed since the filing of said amended affidavit and the original Notice of Appeal served on the Prosecuting Attorney of Sullivan Circuit Court and the Clerk of the Sullivan Circuit Court in the Cause of the State of Indiana vs. Charles E. Barrett No. 5242 as the same appears of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said Court at Sullivan, Indiana, this 9th day of July A. D. 1910.

[SEAL.] ARTHUR E. DE BAUN,
Clerk Sullivan Circuit Court.

Filed Jul- 18, 1910.
EDWARD V. FITZPATRICK, *Clerk.*

18 STATE OF INDIANA, *ss:*

Filed Jul- 18, 1910, Edward V. Fitzpatrick, Clerk.

In the Supreme Court.

CHARLES E. BARRETT, Appellant,
vs.
THE STATE OF INDIANA, Appellee.

Charles E. Barrett, appellant in the above entitled cause says, there is manifest error in the judgment and proceedings of the lower court in said cause in this, to-wit:

1. That the affidavit and information upon which he was prosecuted in the lower court does not state facts sufficient to sustain any judgment, for the reason that there is no valid law of the State of Indiana which was violated by him or with which he could be lawfully charged, with violating.

2. That the Court below erred in overruling appellant's (Defendant below) motion to quash the affidavit and information filed against him.

3. That the Court below erred in overruling appellant's demurrer to the affidavit filed in the lower court and on which he was prosecuted.

4. That the Court below erred in sustaining appellee's demurrer to each paragraph of appellant's plea to the affidavit.

5. That the Court below erred in sustaining the demurrer of appellee to the first paragraph of appellant's plea to the affidavit filed in the lower court against him.

6. That the Court below erred in sustaining the demurrer of the appellee to the second paragraph of appellant's plea to the affidavit filed in the lower court against him.

7. That the Court below erred in rendering judgment against appellant.

19 For which several reasons appellant prays that the judgment of the lower court be in all things reversed and that he be discharged.

CHARLES E. BARRETT,
Defendant.

Filed Jul- 18, 1910.

EDWARD V. FITZPATRICK, *Clerk.*

20 And on the same day the following further pleas and proceedings were had in said cause to-wit:

Comes now the parties by their counsel, and this cause is submitted to the Court for judgment and decree as provided by the Act of the General Assembly of the State of Indiana, approved April 13, 1885, and the rules of said Supreme Court adopted in relation thereto.

21 And afterwards to-wit: on the 2nd. day of August 1910, the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel and files his brief (8) in the words and figures following: (Here Insert).

22 And afterwards to-wit: on the 14th day of November, 1910, the following further pleas and proceedings were had in said Court in said cause:

Comes now the Appellee by counsel and files its briefs (8) in the words and figures following: (Here Insert).

23 And afterwards to-wit: on the 13th day of January, 1911, the same being the 41st Judicial Day of the November Term, 1910, of said Supreme Court, the following further pleas and proceedings were had in said cause, to-wit:

Come now the parties by counsel, and the Court being sufficiently advised in the premises, affirms the judgment of the court below with an opinion pronounced by Cox, Judge, which said opinion is in the words and figures following, to-wit: (Here Insert).

24 THE STATE OF INDIANA:

In the Supreme Court, November Term, 1910.

On the 13th day of January, 1910, being the 41st Judicial day of said November Term, 1910.

Hon. Quincy A. Myers, Chief Justice; Hon. James H. Jordan, Hon. Douglas Morris, Hon. Chas. E. Cox, Hon. Leander J. Monks, Justices.

No. 21725.

In the Case of —

CHARLES E. BARRETT
vs.
STATE OF INDIANA.

Appealed from the Sullivan Circuit Court.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by Cox, J.

25 This prosecution of appellant, as the agent of the Vandalia Coal Company, for an alleged violation of the act approved March 9, 1907, commonly called by coal miners and operators the "wide entry law," has been in this court before. State v. Barrett (—), 172 Ind. 169. On that appeal, after a full consideration of the case then presented, this court reached the conclusion that the act in question was constitutional, that the affidavit charging the defendant, the appellant herein, with a violation of it was good, and that the defendant's special answer was not good. The case was reversed with a mandate to the trial court to sustain the State's demurrer to such special answer, and this the trial court did. There being then no plea, the State, by leave of court, amended the affidavit, and refiled it. The appellant unsuccessfully assailed the amended affidavit by a motion to quash and then a demurrer. He then filed a special answer in two, paragraphs to which demurrers were sustained, after which he entered a plea of not guilty; the cause was submitted to the court for trial, appellant was adjudged guilty and fined.

The appellant treats this case as a new one, merely similar to the case of State v. Barrett, supra; and he argues that "in view of the State amending the affidavit, a new action or prosecution was commenced, and therefore the decision in the former case cannot be said to be res adjudicata." This contention can not prevail, for the amendment was authorized by the criminal code (section 2043 Burns R. S. 1908); and furthermore, an examination of the two affidavits shows that the amendment was wholly material, and left the material facts substantially if not identically the same as those alleged in the affidavit held good by this court. State v. Simpson,

(—), 166 Ind. 211-14. This is therefore a second appeal of this case, and it must be considered in the light of the questions of law presented by the record and decided upon the former appeal, for such questions of law are the law of the case binding upon all the courts and the parties through all of the stages of the cause following whether the questions arise in the same manner or not.

City v. Humprey, (1885) 106 Ind. 146-7; Lillie v. Trentman (1891) 130 Ind. 16-17; Board v. Bonebrake (1896) 146
26 Ind. 311-13; Brunson v. Henry (1898) 152 Ind. 310-12; Pittsburgh, etc. Co., v. Collins, (1906) 168 Ind. 467-72.

The only errors which are well assigned by appellant are, (1) the action of the trial court in overruling appellant's motion to quash the amended affidavit, and (2), In sustaining the State's demurrer to the two paragraphs of appellant's special answer.

The trial court did not commit error in sustaining the demurrer to appellant's special answer. The facts alleged in both of these paragraphs were not materially different from the facts set out in the special answer of appellant which this court held bad on the former appeal for not alleging facts which brought him within the exemption of the proviso of the act; that is, for not alleging facts showing that his mine was in the block coal field or devoted in whole or in part to mining block coal.

And under the law as long and well settled, and announced in the cases above cited, the trial court was as firmly required by the mandate of this court to hold these answers bad as the identical answer involved in the former appeal, for this court's conclusion, that the special answer therein considered is bad, is the law of the case on that question to be adhered to throughout all subsequent stages of the case.

Moreover, it is true that all the facts alleged in the two paragraphs of special answer in this case, appellant could have proven under the general issue; they were intended to meet the charge contained in the affidavit that appellant had violated the act in question, to give in detail the circumstances constituting his defense, they were mere argumentative denials of the charge, and the general issue could not be evaded,—if the appellant had not tendered it, the statute would have forced it. It is questionable whether they were properly pleaded specially in any view of the matter. He could not therefore have been harmed by the action of the trial court in sustaining the State's demurrer.

Neaderhauser v. State, (1867) 28 Ind. 257; Williams v. State, (1907) 169 Ind. 384.

Without setting the amended affidavit out in this opinion it may be said again that it is substantially the same as the one set out in the former opinion of this court and there held good and based
27 on a valid law. That holding must, for the reasons above given, be adhered to and applied to the amended affidavit unless some constitutional objection to the act in question of sufficient potency to overthrow it is now urged that was not presented and decided on the former appeal. The one objection which is presented by appellant as such and which was not presented and decided then

is that said act "is in violation of Article 5 of the Amendments to the Constitution of the United States, in this, that it deprives one class of citizens of property without due process of law." This objection is not well grounded as assigned for this amendment operates exclusively in restriction of federal power, is a limitation on the Congress, and has no application to the States.

Barron v. Baltimore, (—), 7 Pet. 243; Thorington v. Montgomery, (—), 147 U. S. 490; Capital City Co., v. Ohio (—), 183 U. S. 238.

However, as this same provision against the taking of property without due process of law is founded in the Fourteenth Amendment of the United States Constitution which does relate to the States, it may not be out of place to inquire whether this point of appellant presents any objection to the act, sufficient to overcome the presumption in favor of its validity with which it is clothed at the outset. Appellant's objection to the act on this ground is general, so general that as there is nothing on the face of the act to suggest any arbitrary purpose or requirement, or any unfairness, in the regulation of mines provided for therein, it is difficult indeed to see wherein the act is not clearly within the legitimate scope of the police power. The police power of the State board *and* plenary in its effect, embracing its whole system of internal regulation. It embraces all regulations designed to promote the public health, morals or safety. Its scope, and those things it operates *or* specifically, increases with the increasing development of the resources of the State. The passing of our forests and the development of industry make the development of our coal deposits necessary and desirable. Necessity for the proper regulation of operation of such mines results for the protection of those who work therein, and such regulation is too clearly within the police power to be ques-
28 tioned. Appellant in this case complains that the act discriminates between block coal and bituminous mines, to the benefit of the former and hurt of the latter, but there is nothing presented by the record to show that the discretion which the legislature has in the power to regulate, was arbitrarily exercised. In fact, the reason for the discrimination seems to be made clear and proper in the opinion of the court on the former appeal of this case. "Legislation which regulates business may well make the distinctions depend upon the degrees of evil without being arbitrary or unreasonable, or in conflict with the equal protection provisions of the Fourteenth Amendment of the Federal Constitution."

Heath & Milligan etc. Co. v. Worst. (1907) 107 U. S. 338.

In the case just cited it was held that the Supreme Court of the United States would not limit the power of the State by declaring that because the judgment exercised by the legislature is unwise, it amounts to a denial of the equal protection of the laws or deprivation of property or liberty without due process of law. In the case at bar there is not apparent on the face of the law, nor does the record disclose, unwisdom, but a care for workers in a dangerous employment. Appellant has not been deprived of his property, but has had

impressed upon it a regulation, which the legislature in its discretion had deemed wise, and he is pursuing due process of law in the usual orderly course of procedure.

The further suggestion of appellant that the act violates Section Twenty-three of Article One of our State Constitution, and the Fourteenth Amendment to the Federal Constitution, in that "it grants special privileges to another class of citizens engaged in mining coal in what is known as the block coal district, and denies these privileges to all other persons," we think has been sufficiently met by what was said in the former opinion in this case.

State v. Barrett, (1908) 172 Ind. 169.

See also Chandler Coal Co., v. Sams, (1908) 170 Ind. 623, which is decisive of this question.

There is no error in the record, and the Judgment is Affirmed.

29 It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed at the cost of the appellant all of which is ordered to be certified to said Court,

And it is further considered by the Court, that the appellee recover of the appellant the sum of —— for its costs and charges in this behalf expended.

30 [Endorsed:] In the Supreme Court. Certified Copy of Opinion. J. Fred France, Clerk Supreme Court.

31 And afterwards, to-wit on the 13th day of February, 1911, the same being the 67th Judicial Day of the November Term, 1910, of said Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files in the office of the Clerk of the Supreme Court, his petition for the allowance of a writ of error, said petition and the allowance thereof by Quincy A. Myers, Chief Justice of said Supreme Court, being hereto next below attached and being as follows:

32 THE STATE OF INDIANA:

In the Supreme Court.

No. 21725.

CHARLES E. BARRETT, Appellant,
vs.
THE STATE OF INDIANA, Appellee.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Indiana.

To the Honorable Quincy A. Myers, Chief Justice of the Supreme Court of the State of Indiana:

Now comes Charles E. Barrett, appellant in the above entitled cause, and complains and alleges:

1. That he is a citizen of the United States of America; that in the above entitled cause on the 13th day of January, 1911, final judgment was rendered against your petitioner by the Supreme Court of Indiana, that being the highest court of law and equity in the State of Indiana, wherein it was adjudged that the Act of the General Assembly of the State of Indiana and the provisions thereof, approved March 9, 1907, (Acts 1907, page 334, and being Section 8582, edition of Burns R. S. 1908, commonly called the coal mine "Wide Entry Law,") as applied and enforced in the operation of coal mines in the State of Indiana, and particularly as applied in the operation of Vandalia Mine No. 10, in Sullivan County, Indiana, under the direction and charge of your petitioner who was an officer of said Vandalia Coal Company, did not discriminate against your petitioner in the operation of the said coal mine. (See copy of said Act filed herewith and made part hereof, marked
33 Exhibit A), and

2. It was also adjudged by said Supreme Court, by its final judgment in the above entitled matter the provisions of said Act of said General Assembly of the State of Indiana is not in violation of the 14th amendment of the Constitution of the United States in this: that said Act does not grant to certain citizens rights and privileges not given or granted to all citizens of the State; that said Act does not deprive one class of citizens of rights and privileges from which other citizens of the same class are exempted; that said Act does not operate to deprive citizens of Indiana of their property without due process of law; that said Act does not deny to petitioner the equal protection of the laws; and particularly that it does not grant to the citizens of the same class as your petitioner rights and privileges not granted to your petitioner, and.

3. It was also adjudged by said Supreme Court by its final judgment in the above entitled matter, that the provisions of said Act *is* not in violation of Article 14 of the Fourteenth Amendment of the Constitution of the United States which provides that—"nor (shall

any State) deny any person within its jurisdiction the equal protection of the laws," and that said Act does not deny to your petitioner who is within its jurisdiction the equal protection of the laws.

4. And appellant further alleges that said judgment and decision of the said Supreme Court of the State of Indiana does deny and deprive your petitioner of rights and privileges guaranteed to him by the said Amendment to the Constitution of the United States, and does deny him the equal protection of the laws guaranteed by said Amendment of the Constitution of the United States, and does operate to deprive him and the said coal Company of his and its property without due process of law; all of which appears in the record, opinion and final judgment of said Supreme
34 Court of the State of Indiana, which manifest error has happened to the great damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Indiana and the Judges thereof, to the end that the record in the said cause, and the judgment therein rendered, may be removed into the Supreme Court of the United States, and the errors complained of by your petitioner may be examined and corrected and said judgment reversed and your petitioner discharged.

And your petitioner will ever pray.

CHARLES E. BARRETT,
Appellant, Petitioner.

[Endorsed:] Filed Feb. 13, 1911. J. Fred France, Clerk.

35 EXHIBIT "A."

An Act to Regulate the Width of Entries in Coal Mines, Providing for an Unobstructed Space in Such Entries, Providing Penalties and Repealing all Laws in Conflict.

(S. 330. Approved March 9, 1907.)

Coal Mining.—Width of Entries.

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That it shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana, to make, dig, construct, or cause to be made, dug or constructed any entry or trackway after the taking effect of this Act, in any coal mine in the State of Indiana where drivers are required to drive with mine car or cars unless there shall be a space provided on one or both sides continuously of any track or tracks measured from the rail, in any such entry of at least two (2) feet in width, free from any props, loose slate, debris or other obstruction so that the driver may get away from the car or cars and track in event of collision, wreck or other accident. It shall be unlawful for any employé, person or

persons to knowingly, purposely or maliciously place any obstruction within said space as herein provided: Provided, That the geological veins of coal number three and four commonly known as lower and upper veins in the block coal fields of Indiana shall be exempt from the provisions of this act.

Penalty.

SEC. 2. Any such owner, lessee, operator, person or persons, violating any of the provisions of this act shall be guilty of misdemeanor and upon conviction thereof shall be fined in any sum not to exceed two hundred dollars and to which fine may be added imprisonment in the county jail, not to exceed sixty days.

Repeal.

SEC. 3. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

36 The writ of error as prayed for in the foregoing petition, is hereby allowed this 13th day of February, 1911.

The writ of error acts as a supersedeas and the bond for that purpose is fixed at Three Hundred Dollars, with the National Surety Company, as surety.

Dated at Indianapolis this 13th day of February, 1911.

QUINCY A. MYERS,
Chief Justice of the Supreme Court of the State of Indiana.

[Endorsed:] Filed Feb. 13, 1911. J. Fred France, Clerk.

37 STATE OF INDIANA, *ss:*

In the Supreme Court.

CHARLES E. BARRETT, Appellant,
vs.
THE STATE OF INDIANA, Appellee.

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Indiana, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the

bond presented by said petitioner be, and the same is hereby approved.

QUINCY A. MYERS,
Chief Justice of the Supreme Court of the State of Indiana.

Filed Feb. 13, 1911. J. Fred France, Clerk.

38 [Endorsed:] No. 21,725. In the Supreme Court of the State of Indiana. Charles E. Barrett, Appellant, vs. The State of Indiana, Appellee. Petition for Writ of Error. Filed Feb. 13, 1911. J. Fred France, Clerk.

39 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files a writ of error from the Supreme Court of the United States to the said Supreme Court of Indiana, in this cause, said writ of error being hereto next below attached, and being as follows:

40 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the Supreme Court of the State of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said Supreme Court, before you, between Charles E. Barrett, Plaintiff in error, and The State of Indiana, Defendant in error, a manifest error hath happened to the great damage of the said Charles E. Barrett as by his complaint appears: and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Edward D. White Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court this 14th day of February, A. D. 1911.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

41 [Endorsed:] Filed Feb. 13, 1911. J. Fred France, Clerk.

42 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel and files his bond on appeal to the Supreme Court of the United States in the penal sum of Three Hundred Dollars, which bond is taken and approved, being hereto next below attached, and being as follows:

43 In the Supreme Court of the United States.

No. 21725.

CHARLES E. BARRETT, Plaintiff in Error,
vs.
THE STATE OF INDIANA, Defendant in Error.

In Error to the Supreme Court of Indiana.

Bond.

Know all men by these presents, That we, Charles E. Barrett, plaintiff in error, and National Surety Company, as his surety, are held and firmly bound unto the above named, The State of Indiana, defendant in error, in the sum of Three Hundred Dollars, to be paid to said defendant in error, to which payment, well and truly to be made, we bind ourselves jointly and severally and our and each of our heirs, executors and administrators, jointly by these presents.

Sealed with out seals and dated this — day of February, 1911.

Whereas, the above named plaintiff in error has prosecuted his writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit, by the Supreme Court of the State of Indiana;

Now, therefore, the condition of this obligation is, that if the above named plaintiff in error shall prosecute this said writ of error to effect and answer all costs and damages that may be adjudged or awarded against him, if he shall fail to make good this plea, then this obligation to be void; otherwise in full force.

CHARLES E. BARRETT.

[Seal National Surety Company, New York, Incorporated 1897.]

NATIONAL SURETY COMPANY.
By PETTIS B. LAWICE,
Attorney-in-Fact.

Taken and approved by me this 13th day of February, 1911.

QUINCY A. MYERS,
Chief Justice of the Supreme Court of Indiana.

[Endorsed:] Filed Feb. 13, 1911. J. Fred France, Clerk.

44 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files his citation on said writ of error, duly signed by Hon. Quincy A. Myers, Chief Justice of this Court, and proof of service of the citation on the defendant in error, said citation and proof of service thereof being hereto next below attached, and being as follows:

45 In the Supreme Court of the United States.

No. 21725.

CHARLES E. BARRETT, Plaintiff in Error,
vs.
THE STATE OF INDIANA, Defendant in Error.

In Error to the Supreme Court of Indiana.

Citation.

To the State of Indiana, Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Indiana, wherein Charles E. Barrett is plaintiff in error, and you, the State of Indiana, *is* defendant in error, to show cause, if any there be, why the judgment mentioned in above entitled cause, shall not be corrected, and speedy justice should not be done to the parties in this behalf.

Attest: The Chief Justice of the Supreme Court of the State of Indiana, this 13th day of February, 1911.

QUINCY A. MYERS,
Chief Justice.

Service of the above citation and copy thereof delivered me February 13th 1911 and I acknowledge service Feb. 13" 1911.

THOMAS M. HONAN,
Attorney General of the State of Indiana.

46 [Endorsed:] No. 21,725. In the Supreme Court of the United States. Charles E. Barrett, Plaintiff in error vs. The State of Indiana, Defendant in error. In Error to the Supreme Court of Indiana. Citation. Filed Feb. 13, 1911. J. Fred France, Clerk.

47 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files an assignment of errors in the Supreme Court of the United States, on the writ of

error herein, said assignment of errors being hereto next below attached, and being as follows:

48 The Supreme Court of the State of Indiana.

CHARLES E. BARRETT, Plaintiff in Error,
vs.
THE STATE OF INDIANA, Defendant in Error.

Now comes the said plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Indiana, in the above entitled matter, there is manifest error in this, to-wit:

First. That the Court erred in holding that the provisions of the Act of the General Assembly of the State of Indiana, approved March 9, 1907, *is* not in conflict with and in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, for that the State of Indiana, by and through the provisions of said Act assumes and seeks (1) to deprive the plaintiff in error and certain other citizens of the United States and of the State of Indiana of rights, privileges and immunities secured to other citizens of the United States and of said State; (2) to deprive the plaintiff in error and other citizens of the United States of liberty and property without due process of law; (3) to deprive and deny to the plaintiff in error and certain citizens and persons within the jurisdiction of the State of Indiana, the equal protection of the law.

49 Second. The Court erred in holding that by the provisions of said Act of the General Assembly of the State of Indiana Approved March 9, 1907, the plaintiff in error is not deprived of rights, privileges and immunities secured to other citizens of the United States and of the State of Indiana by the Federal Constitution and laws of the United States.

Third. The Court erred in holding that — the provisions of said Act the plaintiff in error is not deprived of liberty and property without due process of law.

Fourth. The Court erred in holding that the provisions of said Act do not deny to the plaintiff in error the equal protection of the law.

Fifth. The Court erred in holding the said Act and the authority exercised thereunder and thereby authorized to be exercised thereunder is within the police powers of the legislature of the State of Indiana.

Sixth. The Court erred in holding the provisions of said Act making it unlawful for plaintiff in error to carry on coal mining without complying with the provisions of said Act of March 9, 1907, to be a valid exercise of police power of the legislature of the State of Indiana.

Seventh. The Court erred in holding that the provisions of said

Act approved March 9, 1907, do not unlawfully discriminate between persons engaged in operating coal mines in the State of Indiana.

Eighth. The Court erred in holding that the provisions of said Act do not cadt upon plaintiff in error burdens cast upon all others engaged in operating coal mines.

50 Nineth. The Court erred in holding that the provisions of said Act are uniform in their operation throughout the State of Indiana.

CHARLES E. BARRETT,
Plaintiff in Error.
JOHN C. CHANEY,
Attorney for Plaintiff in Error.

51 [Endorsed:] The Supreme Court of the State of Indiana. Charles E. Barrett, Plaintiff in error vs. The State of Indiana, Defendant in error. Assignment of Error-. Filed Feb. 13, 1911. J. Fred France, Clerk.

52 STATE OF INDIANA:

In the Supreme Court.

I, J. Fred France, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a full, true and complete transcript of the record of proceedings had, papers filed, motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the Supreme Court of Indiana, in the above entitled cause No. 21,725, Charles E. Barrett vs. State of Indiana, appealed from the Sullivan Circuit Court; also the original petition for the allowance of a writ of error, the original writ of error from the Supreme Court of the United States to the Supreme Court of Indiana, with the allowance thereof; the original citation to the defendant in error and proof of service thereof; a copy of the original bond and its approval by the Chief Justice of said Supreme Court, and the assignment of errors in the Supreme Court of the United States.

Which said transcript, annexed hereto, together with said original petition for the allowance of a writ of error, said original writ of error, original citation, copy of the original bond and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In witness whereof, I hereto set my hand and affix the seal of said Supreme Court, at the City of Indianapolis, this 21″ day of February, 1911.

[Seal Supreme Court State of Indiana, MDCCCXVI.]

J. FRED FRANCE,
Clerk Supreme Court of Indiana.

53 [Endorsed:] In the Supreme Court of the United States. Charles E. Barrett, Appellant & Pl't'ff in Error, vs. The State of Indiana, Appellee & Defendant in Error. Appeal by Writ of Error from Supreme Court of Indiana. John C. Chaney, Attorney for Appellant and Plaintiff in Error.

Endorsed on cover: File No. 22,570. Indiana Supreme Court. Term No. 949. Charles E. Barrett, plaintiff in error, vs. The State of Indiana. Filed March 6th, 1911. File No. 22,570.

2

Supreme Court, U. S.
FILED.
JUL 25 1911
JAMES H. McKENNEY,
CLERK.

— IN THE —

Supreme Court of the United States

IN ERROR FROM THE SUPREME COURT OF THE STATE OF INDIANA.

CHARLES E. BARRETT,
Plaintiff in Error,
vs.
THE STATE OF INDIANA,
Defendant in Error.

No. 540.24

APPELLANT'S BRIEF.

JOHN C. CHANEY,
CHARLES E. BARRETT,
Attorneys for Plaintiff in Error.

Central City Publishing Co., Printers, Indianapolis.

— IN THE —

Supreme Court of the United States

IN ERROR FROM THE SUPREME COURT OF THE STATE OF INDIANA.

CHARLES E. BARRETT,
Plaintiff in Error,
vs.
THE STATE OF INDIANA,
Defendant in Error.

No. 949.

APPELLANT'S BRIEF.

JOHN C. CHANEY,
CHARLES E. BARRETT,
Attorneys for Plaintiff in Error.

POOR CO

— IN THE —

Supreme Court of the United States

IN ERROR FROM THE SUPREME COURT OF THE STATE OF INDIANA.

CHARLES E. BARRETT,
Plaintiff in Error,
vs.
THE STATE OF INDIANA,
Defendant in Error.

No. 949.

APPELLANT'S BRIEF.

STATEMENT OF THE CASE.

This action was commenced in the state courts of Indiana by the defendant in error against the plaintiff in error, and was commenced by the prosecuting attorney of the Fourteenth Judicial Circuit of the State of Indiana filing in the Circuit Court of Sullivan County, Indiana, an affidavit against plaintiff in error, which affidavit reads as follows:

OPY

"IN THE SULLIVAN CIRCUIT COURT.

VIOLATING MINING LAW.

"State of Indiana, Sullivan County, SS:

THE STATE OF INDIANA

vs.

CHARLES E. BARRETT.

Walter F. Wood, being duly sworn according to law upon his oath, says: That at and in Sullivan county, in the State of Indiana, on the 14th day of July, 1908, one Charles E. Barrett was then and there the operator of a coal mine at and in Sullivan county, in said State of Indiana, known as Vandalia Mine No. 10, which mine then and there employed more than ten men, and which mine was then and there on said day, and had been for a long time prior thereto, operated as a coal mine under the order and direction of the defendant, and in which mine at and during all such time laborers, drivers and miners worked; that on and prior to said 14th day of July, 1908, the said defendant did then and there cause to be made, dug and constructed an entry and trackway in said coal mine upon and along which a continuous mine car track was laid, upon which loaded cars of coal, and empty coal cars, were hauled by mules and motors under the charge of drivers, and along which entries drivers were and are required to drive with said mine cars; and said defendant did then and there wrongfully and unlawfully fail to provide in said entries in said mine on either side of said mine car track, a continuous space of two feet, measured from said car track rail, free from props, loose slate, debris and other obstruction so that the drivers could get away from these cars run upon said track in the event of wreck, collision or other accident, contrary to the form of the statutes of the State of Indiana, in such cases made and provided, and against the peace and dignity of the State of Indiana.

WALTER F. WOOD.

Sworn to before me and subscribed in my presence this 1st day of June, A. D. 1909.

ARTHUR E. DEBAUN,
Clerk Sullivan Circuit Court.

Examined and duly approved by me this 1st day of June, A. D. 1909.

WALTER F. WOOD, *Prosecuting Attorney.*"

The prosecution of the plaintiff in error was had under an act of the General Assembly of the State of Indiana, approved March 9th, 1907, which act, omitting Section 3, which is the repealing of all laws in conflict, reads:

An act to regulate the width of entries in coal mines, providing for an unobstructed space in such entries, providing penalties and repealing all laws in conflict.

(S. 330. Approved March 9, 1907.)

COAL MINING—WIDTH OF ENTRIES.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That it shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana, to make, dig, construct, or cause to be made, dug or constructed, any entry or trackway after the taking effect of this act, in any coal mine in the State of Indiana where drivers are required to drive with mine car or cars unless there shall be a space provided on one or both sides continuously of any track or tracks measured from the rail, in any entry of at least two (2) feet in width, free from any props, loose slate, debris or other obstruction, so that the driver may get away from the car or cars and track in event of collision, wreck or other accident. It shall be unlawful for any employe, person or persons to knowingly, purposely or maliciously place any obstruction within said space as herein provided: *Provided*, that the geological veins of coal numbers three and four, commonly known as the lower and upper veins in the block coal fields of Indiana, shall be exempt from the provisions of this act.

PENALTY.

Sec. 2. Any such owner, lessee, operator, person or persons, violating any of the provisions of this act, shall

be guilty of misdemeanor and upon conviction thereof shall be fined in any sum not to exceed two hundred dollars, and to which fine may be added imprisonment in the county jail, not to exceed sixty days."

Plaintiff in error, upon being called upon to plead to the charge filed against him, filed a motion in writing to quash the affidavit, in these words:

"IN THE SULLIVAN CIRCUIT COURT.

State of Indiana, Sullivan County, SS:

THE STATE OF INDIANA
vs.
CHARLES E. BARRETT. } No. 5242. Motion to Quash Affidavit.

The defendant in the above entitled cause now comes and moves the court to quash the amended affidavit filed against him herein and which he is required to answer, and, for reason, says:

First. That said amended affidavit does not state facts sufficient to constitute a cause of action against him.

Second. That said amended affidavit does not state facts sufficient to charge a public offense.

Third. That said amended affidavit attempts to charge this defendant with a violation of an alleged act of the General Assembly of the State of Indiana, approved March 9th, 1907 (Acts 1907, page 334), and such act of the Legislature is in violation of the Constitution of the State of Indiana in this: (a) That by said act privileges and immunities are attempted to be granted to one class of citizens which are not granted alike to all citizens. (b) That by said act the taking effect thereof is delegated to a certain class of citizens, and such alleged act does not purport to take effect in pursuance of the Constitution of the State of Indiana.

Fourth. That said affidavit has for its foundation an alleged act of the General Assembly of the State of Indiana approved March 9th, 1907, which act is as follows:

POOR COP

CHAPTER 197.

An act to regulate the width of entries in coal mines, providing for an unobstructed space in such entries, providing penalties and repealing all laws in conflict.

S. 330. Approved March 9, 1907.

Section 1. Be it enacted by the General Assembly of the State of Indiana, that it shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana to make, dig, construct, or cause to be made, dug or constructed, any entry or trackway after the taking effect of this act, in any coal mine in the State of Indiana, where drivers are required to drive with mine car or cars, unless there shall be a space provided on one or both sides continuously of any track or tracks, measured from the rail, in any such entry, of at least two (2) feet in width, free from any props, loose slate, debris or other obstructions, so that the driver may get away from the car or cars and track in event of collision, wreck or other accident. It shall be unlawful for any employe, person or persons to knowingly, purposely or maliciously place any obstruction within said space as herein provided: *Provided*, that the geological veins of coal numbers three and four, commonly known as the lower and upper veins in the block coal field of Indiana, shall be exempt from the provisions of this act.

Section 2. Any such owner, lessee, operator, person or persons violating any of the provisions of this act shall be guilty of misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed two hundred dollars, to which fine may be added imprisonment in the county jail not to exceed sixty days.

Section 3. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

And which act of the said Legislature of the State of Indiana is in violation of the Constitution of the United States in this: (a) That said act grants to certain citizens rights and priviliges not given or granted to all the citizens of all the state. (b) That said act deprives one class of citizens of rights and property and exempts other

citizens of the same class. (c) That said act denies to the defendant, who is within the jurisdiction of the court, the equal protection of the law, and grants to one class of citizens in the State of Indiana rights and privileges not given or granted to this defendant.

WHEREFORE, the defendant asks that said affidavit be quashed and that he be not required to further answer herein. CHARLES E. BARRETT, *Defendant.*"

The motion to quash was overruled and an exception taken to the ruling of the court, and plaintiff in error filed a demurrer to the affidavit as follows:

"IN THE SULLIVAN CIRCUIT COURT.

January Term, 1910.

State of Indiana, Sullivan County, SS:

THE STATE OF INDIANA
vs.
CHARLES E. BARRETT. } Demurrer to Affidavit.

And the said Charles E. Barrett, in his own person, cometh into court here, and having heard the said affidavit read, says that the said affidavit and the matters therein contained, in manner and form as the same are herein stated and set forth, are not sufficient in law, and the said Charles E. Barrett is not bound by the law of the land to answer the same; that the same are not sufficient in law in this: That the said affidavit is based upon an alleged act of the General Assembly of the State of Indiana, entitled 'An act to regulate the width of entries in coal mines, providing for an unobstructed space in such entries, providing penalties and repealing all laws in conflict,' approved March 9, 1907. That said pretended act of the Legislature is in violation of the Constitution of the State of Indiana in that said act gives to the operators and persons engaged in the mining of coal in geological veins of coal numbers three and four, and known in the block coal field as 'upper' and 'lower' vein, rights and privileges not given nor granted to other persons engaged

POOR COP

in the mining of coal under similar and like conditions; and that said pretended act of the said General Assembly of the State of Indiana is in violation of the Constitution of the United States in this: That, by said act, rights and privileges and immunities are given and granted one class of citizens, to-wit: Operators and persons engaged in the mining of coal from geological veins three and four, known in the block coal field of the State of Indiana as 'upper' and 'lower' veins, not given to other citizens of the State engaged in the mining of coal from the same geological veins; and this he is ready to verify.

WHEREFORE, for want of sufficient affidavit in this behalf, the said Charles E. Barrett prays judgment, and that by the court he may be dismissed and discharged from the said premises in said affidavit specified.

CHARLES E. BARRETT.

JOHN T. & WILL H. HAYS,

Attorneys for Defendant."

This demurrer was overruled, to which ruling plaintiff in error excepted.

Whereupon plaintiff in error filed a special answer in two paragraphs, which answer is in these words:

"IN THE SULLIVAN CIRCUIT COURT.

State of Indiana, Sullivan County, SS:

THE STATE OF INDIANA
vs.
CHARLES E. BARRETT. } Defendant's Plea.

The defendant, for plea and answer to the affidavit filed herein against him, says and avers: That said affidavit and the proceedings thereunder in this case is based upon and being had under an act of the General Assembly of the State of Indiana, entitled 'An act to regulate the width of entries in coal mines, providing for an unobstructed space in such entries, providing penalties and repealing all laws in conflict,' approved March 9th, 1907.

Defendant avers that at the date alleged in the affidavit he was the secretary of Vandalia Coal Company, and one of the executive committee of such company, and that on the day alleged and for some time prior thereto said Vandalia Coal Company was the owner of a coal mine situate and being in Sullivan county, Indiana, and known as Vandalia Mine No. 10; and that on the day alleged in such affidavit and for some time prior thereto said mine was being operated by said Vandalia Company under the orders and direction of the officers thereof, and under the order and direction of the executive committee of said company, and of which officers this defendant was one, and of which executive committee this defendant was a member.

Defendant further avers that on the day and date alleged in said affidavit the said Vandalia Coal Company was engaged in the mining of coal in said mine, but it was mining such coal from what is known as geological vein of coal number four, and was mining no other coal in said mine and was operating in no other vein of coal in said mine.

Defendant further avers that in the State of Indiana veins of coal have a well-known geological number, the lowest vein being number one, and the veins are numbered upwards; that in some parts of the State of Indiana part only of such veins are found, and in parts of the State two or more veins are found; that in Sullivan county, Indiana, there are three or more veins of coal, viz.: numbers three, four and five; that in other counties there are veins four, five and six, and in others, five, six and seven; that in some of the counties a vein of coal is found known as block or semi-block coal, but the same is so found in said geological veins number three and four, and is not found in any other vein; that by custom in such counties where block or semi-block coal is so found, such coal being in said geological veins numbers three and four is called 'upper' and 'lower' vein, but such designation does not mean coal found in any other vein than geological veins numbers three and four; and that geological veins of coal numbers three and four are identical with what is known

as 'upper' and 'lower' veins in the field wherein block or semi-block coal is found.

Defendant further avers that under and by virtue of said act of the General Assembly of the State of Indiana, aforesaid geological veins of coal numbers three and four are excepted from the operation of such act of the General Assembly, aforesaid, and as Vandalia Coal Company on the date alleged in the affidavit was mining coal from said geological vein of coal number four as aforesaid, and from no other vein of coal, it was not required to comply with the provisions of said act, and hence in directing the operations of such mine and in operating the same this defendant did not violate any law, and he is not guilty as therein in said affidavit alleged, and he demands that he be discharged.

SECOND PARAGRAPH.

And for second and further plea and answer herein to the affidavit filed herein against him, this defendant avers: That said affidavit is based upon an act of the General Assembly of the State of Indiana, entitled 'An act to regulate the width of entries in coal mines, providing for an unobstructed space in such entries, providing penalties and repealing all laws in conflict,' approved March 9th, 1907.

This defendant further says that he should not be required to respond herein, or make further defense herein to the charge contained in said affidavit, because, he says: That Vandalia Coal Company, a corporation organized and existing under the laws of the State of New Jersey, and duly authorized to do and transact business in the State of Indiana, is the owner of the coal mine mentioned and described in said affidavit; that this defendant is the secretary of said company, and one of its executive committee; that said mine is operated under the order and direction of the officers of said Vandalia Coal Company, and under the order and direction of the executive committee of said corporation; that it is provided in said act of the General Assembly of the State of Indiana that

said act should not apply to geological veins of coal numbers three and four, and which veins are known in the block coal fields of Indiana as 'upper' and 'lower' veins; and defendant further avers that on the date alleged in the affidavit said Vandalia Coal Company was engaged in mining coal from its mine in Sullivan county, Indiana, known as Vandalia Mine No. 10, from geological vein number four, and was mining coal from no other vein; that said act of the General Assembly of the State of Indiana aforesaid is void, for the reason that it is in conflict with the Constitution of the State of Indiana, in this: That said act gives to the operators and persons engaged in the mining of coal in geological veins of coal numbers three and four, and known in the block coal fields as 'upper' and 'lower' veins, rights and privileges not given nor granted to other persons engaged in the mining of coal, and said act of the General Assembly of the State of Indiana, is not uniform in its operation throughout the State of Indiana, and said act of the General Assembly of the State of Indiana is in violation of the Constitution of the United States in this: That by said act, rights, privileges and immunities are given and granted one class of citizens, to-wit: operators and persons engaged in the mining of coal from geological veins three and four, known in the block coal fields as upper and lower veins, not given to other citizens of the State engaged in the mining of coal from the same geological vein, and that this defendant should not be called upon to further answer herein, and for the reason herein set forth he says he is not guilty as charged in said affidavit, and for the further reason that there is no valid or legal statute or act of the General Assembly of the State of Indiana under which this action is based, and he therefore demands that he be discharged.

CHARLES E. BARRETT, *Defendant.*

Charles E. Barrett, being duly sworn according to law, upon his oath, says, that he is the defendant herein; that he has read the foregoing two paragraphs of answer; that he believes the matters and things therein alleged and set forth to be true in substance and in fact.

CHARLES E. BARRETT.

Subscribed and sworn to before me in my presence this 16th day of December, 1909.

(SEAL) MARGARET O. PITTS, *Notary Public.*

My commission expires January 8, 1911."

The State of Indiana, defendant in error, demurred to each paragraph of this answer and such demurrer was sustained. Exceptions were saved to each of these rulings and plaintiff in error suffered a fine in the sum of ten dollars and costs, and was ordered committed to the jail of the county until the fine and costs were paid or replevied. He prayed an appeal to the Supreme Court and entered into bond. The record was filed in the Supreme Court of the State of Indiana, and upon a hearing the Supreme Court adjudged that said act of the Legislature was a valid law and adjudged and decreed said act not in violation of the Federal Constitution or the amendments thereof.

Thereupon the plaintiff in error prosecuted these proceedings to the Supreme Court of the United States to reverse the judgment of the Supreme Court of the State of Indiana.

THE QUESTIONS INVOLVED AND THE MANNER IN WHICH THEY ARE RAISED.

The question involved in this appeal and presented to this court for decision is whether or not the act of the General Assembly of the State of Indiana, approved March 9, 1907, violates the fourteenth amendment to the Federal Constitution. This question is raised:

1. By the motion of the plaintiff in error to quash the affidavit filed in the Sullivan Circuit Court against plaintiff in error.

2. By the demurrer of the plaintiff in error to the affidavit filed in the Sullivan Circuit Court.

3. By the answer of the plaintiff in error to the affidavit and the demurrer of the defendant in error to such answer.

2.

ERRORS RELIED UPON IN THIS COURT.

This case comes to this court upon a writ of error and the following errors are specifically named in the writ and are asserted and intended to be urged, to-wit:

1. That the Supreme Court of the State of Indiana erred in its opinion and judgment wherein it adjudged that the act of the General Assembly of the State of Indiana, approved March 9th, 1907, as applied and enforced in the operation of coal mines in the State of Indiana, and particularly as applied and enforced against plaintiff in error in the operation of Vandalia Mine No. 10, in Sullivan county, Indiana, was not in violation of the fourteenth amendment to the Constitution of the United States.

2. That the Supreme Court of the State of Indiana erred in its opinion and judgment wherein it adjudged that said act of the General Assembly of the State of Indiana, approved March 9th, 1907, did not grant to certain of its citizens rights and privileges not given or granted to all its citizens, and in adjudging and decreeing that said act of the General Assembly of the State of Indiana did not deprive one class of citizens of rights and privileges given and granted to other citizens of the same class.

3. That the Supreme Court of the State of Indiana

erred in its judgment and opinion in adjudging that said act of the General Assembly of the State of Indiana, approved March 9th, 1907, does not deny to the plaintiff in error the equal protection of the law.

4. That the Supreme Court of the State of Indiana erred in its judgment and opinion in adjudging and decreeing that there was no discrimination in the act of the General Assembly of the State of Indiana against plaintiff in error or the Vandalia Coal Company, which was in violation of the fourteenth amendment of the Constitution of the United States.

The Federal Question.

The Indiana statute enacts—

"That it shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana to make, dig, construct, or cause to be made, dug or constructed, any entry or trackway after the taking effect of this act, in any coal mine in the State of Indiana, where drivers are required to drive with mine car or cars, unless there shall be a space provided on one or both sides continuously of any track or tracks, measured from the rail, in any such entry, of at least two (2) feet in width, free from any props, loose slate, debris or other obstructions, so that the driver may get away from the car or cars and track in event of collision, wreck or other accident.

* * * * * * *

Provided, that the geological veins of coal numbers three and four, commonly known as the lower and upper veins in the block coal field of Indiana, shall be exempt from the provisions of this act."

Query.—Is it not as important for the "driver to get away from the car or cars and track in the event of collision, wreck or other accident" in veins *three* and *four* as it is in veins one, two, five, six and seven?

If the two feet space is any security to the driver on the entries of one or more of the coal veins, why should not such space be provided in all?

If this is not a discrimination in favor of the operators in veins three and four, it must be an absolute imposition on the operators of all of the other coal veins, and it looks like it is both.

It is an arbitrary distinction between mine operators in which the proponents of the law favored the one and imposed upon the other.

The said act of the Legislature deprives the owners and operators of coal mines, operating in coal veins one, two, five, six and seven, of their property and individual rights and exempts owners and operators of coal mines operating in veins three and four.

Said act denies to the defendant the equal protection of the law. It deprives him of his right to operate his private property as to him seems best, and grants to the owners and operators in veins three and four the privilege of managing their business as they please.

It is an invasion of the constitutional rights of the defendant, without benefit to any class of citizens or to the citizens generally of the State.

The great question in this suit is, that the said act of the Indiana Legislature contravenes the fourteenh amendment to the Federal Constitution, and the conviction of the defendant thereunder deprives him of the individual rights of liberty and property guaranteed to him by the Federal Constitution.

The Supreme Court of Indiana would sanction this violation of the Constitution and this invasion of defendant's rights. The Supreme Court of Indiana should have held

that said act of the General Assembly of Indiana was and is a violation of the fourteenth amendment to the Federal Constitution; that it did and does deprive one class of citizens and this defendant of rights and privileges which are granted to other citizens of his class; that said act denies to the defendant the equal protection of the laws; that the said act is a discrimination against the defendant in his rights under the fourteenth amendment to the Federal Constitution.

In our brief in the Supreme Court of the State of Indiana the questions presented were set out under points and authorities, and such parts thereof as is to be presented to this court is here repeated.

POINTS AND AUTHORITIES.

1.

The acts of the General Assembly, approved March 9th, 1907, is in conflict with section one of the fourteenth amendment to the Constitution of the United States. The act in question denies the equal protection of the law to the person or persons engaged in the mining of coal in certain districts of the State. It grants special privileges to another class of citizens engaged in mining coal in what is known as the block coal district, and denies these privileges to all other persons. This question is presented by the motion to quash the affidavit, by the demurrer of appellant to the affidavit, and by the special answers of appellant.

Chicago, M. & St. P. Ry. Co. v. Westby, 178 Fed. 619;

Bells Gap R. R. Co. v. Pennsylvania, 134 U. S. 232-237;
Gulf, etc., R. R. Co. v. Ellis, 165 U. S. 150-159;
Yick v. Hopkins, 118 U. S. 356-359;
Cotting v. Kansas City Stock Yards, etc., 183 U. S. 79;
Barbier v. Connelly, 113 U. S. 27-31;
Santa Clara Co. v. Southern Pacific, 118 U. S. 394;
Pembina Co. v. Pennsylvania, 125 U. S. 181;
Charlater R. R. Co. v. Gibbs, 142 U. S. 386;
Covington v. Sandford, 164 U. S. 578;
Smythe v. Ames, 169 U. S. 466;
Tiedman, Pal. Powers (1886), Sec. 3, pp. 12-13;
Toledo Co. v. Jacksonville, etc., 67 Ill. 37;
Lake View v. Rose Hill Cemetery, etc., 70 Ill. 192;
Southern Railway Co. v. Greene, 216 U. S. 400;
and cases referred to in argument.

5.

The second paragraph of appellant's special plea avers such a state of facts as clearly shows that appellant in the operation of the coal mine referred to in the affidavit fell within the exception or proviso clause of the act. The answer further shows the act of 1907, *supra*, to be class legislation, and shows that appellant is, by its terms, denied the equal protection of the law. It was error in the lower court sustaining the demurrer of the appellee to this paragraph of answer.

Greene v. State, 119 N. W. 6.

ARGUMENT.

This cause comes to this court as a result of the demands of certain so-called labor organizations appealing to the Legislature and securing the enactment of certain laws demanded by them. In Indiana there are a large number of corporations, firms and individuals engaged in operating coal mines and the coal so mined is known as bituminous coal. In one or two counties in the State there is also a coal known, by reason of its being flat like a slate, as "block coal," and it is also a bituminous coal.

A bill was introduced in the Indiana Legislature requiring every operator of a coal mine to have wide entries in such mines. This, it was claimed by certain labor committees, would lessen the danger of accidents, but the operators claimed it increased the hazard for the reason that it would leave a larger space exposed to the air, and it is known that the slate overlying the coal, when exposed to a current of air, soon gets loose and is liable to fall. The labor committee argued that this space should be propped and that by so doing labor would be employed. The operators contended that no prop was so good or so safe as the coal in place and that the entries should only be of such a width as to insure safety to the men engaged in using the entries as a passway in and to their working places. The operators in the block field were evidently represented in the framing of the legislation, as the bill as introduced was amended and the operators of coal in geological veins three and four in the block coal field were exempted from the provisions of the act.

That the court may have the case before it in its true light, so as to consider this act of the General Assembly of the State of Indiana, we beg the indulgence of the court for a moment. Coal in Indiana is mined from a shaft reaching from the surface downward. This shaft varies in depth. Veins of coal are numbered from one upwards, vein number one being the lowest vein. In many of the counties in Indiana veins number six and seven are worked; in other counties veins five and six, and in other counties veins three, four and five. The shaft is sunk to the vein of coal to be worked. In Indiana, overlying the vein of coal is a layer of slate which, among miners and operators, is known as "the roof." From the bottom of the shaft entries are driven into the coal vein, the operators, from the commencing of mining of coal, driving such entries of such width as to lay a small track upon which to run cars, the cars up to recent date and in many mines at the present time hauling the cars over such track with mules, and at the present time some of the mines employ an electric motor The slate overlying the vein of coal, when coming in contact with a current of air, slacks and crumbles and falls, frequently large blocks falling. To protect the miner in passing along the entries in going to and from his work this slate is propped with cross bars of timber. If the entry be very wide it is hard to prop the same securely and the expense of the timber is quite large. The operators have always contended that the more narrow the entry, the less slate exposed, the less danger of its falling and the easier to move and safely prop it. A wide entry is an expense to drive and expense to maintain and increases the hazard to the men who use such entry, but by having a wide entry the men en-

gaged in driving the same secure additional work, receive extra compensation; the timber man has more work to do and more men are required to do the work; hence to force the operator in operating the mine, for these reasons, to do this, the act in question was passed. The statistics will show that in mines having these extra wide entries more accidents have occurred than in the mines with the standard entry, which has been in use by the operators for the last forty years.

There is no practical difference in the mining of coal in the counties having block coal and the other counties. The same conditions exist and have existed in all the counties ever since coal has been mined in Indiana. The roof in all the mines is of the same character and to exempt the operators in the counties having block coal from the operation of the law is a discrimination, an unjust and unfair discrimination in favor of the operators of such counties. The record before this court presents questions under the Constitution of the United States, and these questions are presented for opinion.

Is the act of March 9th, 1907, in violation of the Federal Constitution?

Does said act grant to the coal operator in counties where there are veins of block coal rights and privileges not given or granted to operators in other counties wherein no veins of block coal are mined?

It will not do for the defendant in error to contend that a different condition exists. The written plea of plaintiff in error to which the demurrer of the defendant in error was sustained, shows and specifically avers that Vandalia Mine No. 10 was being operated in geological vein number four, and that this geological vein was the same vein being

operated in the counties where there existed block coal. It is of this arbitrary exercise of power by the legislature of which we complaint.

We know it is the rule of the court to uphold the acts of the General Assembly of a state if there be any doubt as to the constitutionality, and therefore we sought by pleading the facts in a special answer to show the court how this act was in its practical operation construed and enforced to the injury of one class of citizens and in favor of people of the same class but locally situated in another part of the state. We apprehend the court will have no need to search beyond the affidavit and the answer of the plaintiff in error for the reasons. We think it plain that the purpose and intent of this act of March 9th, 1907, was to cast a burden upon each corporation, firm or person engaged in the operation of a coal mine in counties where block coal is mined in the way of requiring the constructing of wide entries, thus requiring additional timbering, additional work and the employment of additional labor, and at the same time it was the purpose of the act not to cast this burden on operators in counties where there existed block coal mines. The court will bear in mind that the act does not except or exempt operators mining block coal, but it provides that the act shall not apply to the block coal field.

We have always contended that the mining of coal is a private enterprise. No person is compelled to perform work in a mine unless he desires to do so, and it could only be by reason of the police power of the state that any act of the General Assembly of a state regulating the maintaining and operating a mine could be sustained. The police power when used in a just and lawful manner should be sustained, but where the power is invoked for the bene-

fit of a certain body of people under organization against the man engaged in a lawful business—and then ask the courts to sanction such laws and hold that they are within the police powers of the state, goes beyond the police powers of the state.

Where any act of the General Assembly of a state is brought about by one class of citizens in order that they may reap a benefit therefrom at the expense of another body of citizens, or at the expense of an incorporated company, and the whole of the citizens of the state are not benefited, then such legislation is not within the police power of the state and should be stricken down. No one will contend for a moment but what the act in question emanated from the councils of an organization of men engaged in mining coal, and that the sole and only purpose of such legislation was to obtain an advantage over the financial man who owns and operates a mine. The business of coal mining, as we have before stated, is not one affected by any public interest, and the plaintiff in error, nor Vandalia Coal Company, is not claimed to be a monopoly; the plaintiff in error is a private citizen and the corporation of which he is an officer and director is purely engaged in a private business, and it is very questionable whether the state has any power to interfere with its established mode of doing business. The company represented by the plaintiff in error owns the fee simple of the real estate in which the vein of coal is being mined and operated. It is not compulsory for any person to enter such mine. If they seek employment and belong to the United Mine Workers organization they may be employed, but that is optionary with them—they have the right and privilege to cease the employ of the operator at any and all times. Then why is

it necessary to continue to enact laws under the guise of the police power of the state not in the real interest of the protection of such laborer of life or limb, but in truth and in fact simply to satisfy a whim or at the request of some walking delegate or disorganizer of laboring men.

A company lawfully doing business in a state is no more bound by a general unconstitutional enactment than a citizen of the state.

May the State of Indiana exercise the right to regulate the private business of a corporation doing business within the state, such regulation not being one of the conditions upon which the corporation was admitted into the state to transact its business? Would not the exercise of this power be in violation of the fourteenth amendment to the Constitution of the United States, which declares that no state shall "deprive any person of life, liberty, or property, without due process of law."

As before stated the business of Vandalia Coal Company is not a monopoly. No one is compelled to resort to it as the only coal operator furnishing employment to the laboring man; no laboring man is required to enter its employ; no employe is required to remain a day or an hour longer than he desires, but no laborer can be employed unless he is a member of the Union and no miner can be discharged except with the permission of the Union. If the state, under the guise of the exercise of its police power, may determine the width of an entry in a coal mine situate upon a man's own property, it has the same right to fix a price per ton on the coal mined; it would have the right to say that no miner engaged in a mine should be paid less than a fixed sum per day, or a fixed sum per ton for coal mined. Such legislation is confiscatory. The purpose of the four-

teenth amendment to the Constitution is, among other things, to protect the rights of those engaged in private business, and protects them in the use of their own property, and prohibit unjust interference therewith by any person not entitled to share in the control or management thereof. The extent to which the state may go, in the exercise of the so-called police power, in the regulation of the business of private persons or corporations organized for the carrying on of a private business has never been fully or clearly defined.

The business of mining coal is no different in kind from the business of any large mercantile or manufacturing company, whose capital, experience, and facilities may enable it to have a widely extended patronage, but such characteristics do not make the business one which is affected with a public interest.

State v. Associated Press, 159 Mo. 410.

In the case of *American Surety Company v. Shallenberber*, 183 Fed. 636, the court say:

"If the court may fix the amount of compensation for which an insurer may lawfully contract for furnishing such insurance, the state may dictate the price for which all other commodities shall be sold, including the price which may be paid for labor. This cannot be done. The fourteenth amendment to the Constitiution protects the right of those engaged in purely private business to fix the price at which they will sell their services or commodities."

In the case of *Chesapeake & Potomac Telephone Co. v. Manning*, 186 U. S. 238, which involved the right of Congress to regulate the charges to be made by any person or telephone company doing business in the District of Columbia for the use of such telephones. The court said:

"And we start with the proposition that it cannot be presumed that a legislature intends any interference with

purely private business. It cannot ordinarily prescribe what an individual or corporation, engaged in a purely private business, shall charge for services, and therefore, although the language of a statute may be broad enough to include such private business, it will generally be excepted therefrom in order to remove all doubts of the validity of the legislation. It appears that some portion of the defendant's business is of a purely private nature, the receipts whereof are spoken of in its reports as private rentals, and as to such business Congress could not, if it would, prescribe what shall be charged therefor. In many buildings, both those belonging to the government or the district, and those belonging to private individuals, is what may be called a local telephone plant—that is, an arrangement of telephones by which parties in different rooms can communicate with each other—a system which is not connected with the general telephone exchange, and is no more public in its nature than the speaking tubes or call bells in a building. It is only for the personal use of parties in the building. By it those in the building cannot communicate with the general public, nor can such public reach parties in the building. It is simply a local convenience for the use solely of those who are in the building. Such combinations of telephone instruments in a single building, with no outside connections, are furnished by the defendant, and the rentals therefrom, as well as the expenses thereof, are entered in its books of account, and constitute a part of its business. The mere fact that such telephones are furnished by the company, which also does a public business, does not make them a part of such public business, or subject them to the regulation by Congress of its charges. A railroad company may, if authorized by its charter, carry on not simply its strictly railroad business, but also an establishment for the manufacture of cars and locomotives. The fact that it is engaged in these two different works would not in itself subject the manufacturer of cars and locomotives to the supervision of the legislature, although such body would have the right to regulate the charges for railroad transportation. So, in an inquiry into the reasonableness of the charges imposed by Congress in this leg-

islation, it is essential that the receipts and expenses from such private telephone systems be excluded from consideration."

Ex parte Dickey, 144 Cal. 234, 77 Pac. 924, 66 L. R. A. 928, 103 Am. St. Rep. 82, was a case involving the validity of an act of the California Legislature limiting the compensation which an employment agent may receive to 10 per cent. of a month's wages in the employment furnished. In holding the act invalid the Supreme Court of that state said:

"The petitioner is engaged in a harmless and beneficial business. As part of his 'property' in that business are the services that he renders in obtaining employment for those seeking it. It is not compulsory upon any one to employ him, and who so seeks to avail himself of his services is at liberty to reject them if the terms of the contract for compensation are not satisfactory to him. This right of contract common to all legitimate occupations is an asset of the petitioner in his chosen occupation, and, as has been said, is a part of the property in the enjoyment of which he is guaranteed protection by the Constitution. By the act in question he is arbitrarily stripped of this right of contract, and deprived of his property, and left, in following his vocation and in pursuit of his livlihood, circumscribed and hampered by a law not applicable to his fellow men in other occupations. Such legislation is of the class discussed by Judge Cooley in the paragraph above quoted—'entirely arbitrary in its character, and restricting the rights, privileges, or legal capacities' of one class of citizens 'in a manner before unknown to the law.' For such legislation, as he very justly adds, those who claim its validity should be able to show a specfic authority therefor, 'instead of calling upon others to show how and where the authority is negatived.' And where it may be asked, could the line be drawn, if the legislature, under the guise of the exercise of its police power, should thus be permitted to encroach upon the rights of one class of citizens? Why should not the butcher and the baker, dealing in the neces-

saries of life, be restricted in their right of contract, and consequently in their profits, to 10, 5, or 1 per cent.? Why should not the contractor, the merchant, the professional man, be likewise subjected to such paternal laws, and why might not the legislature fix the price and value of the services of labor? The law is clearly one of those, the danger of whose enactment was foreshadowed by this court in Ex parte Jentzsch, 112 Cal. 468, 44 Pac. 803, 32 L. R. A. 664, when it said: 'So, while the police power is one whose proper use makes most potently for good, in its undefined scope and inordinate exercise lurk no small danger to the republic. For the difficulty which is experienced in defining its just limits and bounds affords a temptation to the legislature to encroach upon the rights of citizens with experimental laws, none the less dangerous because well meant.'"

In the case of *People v. Coler*, 166 N. Y. 1, 59, N. E. 716, 52 L. R. A. 814, 82 Am. St. Rep. 605, the court had before it an act of the legislature of New York providing that laborers on public works should be paid the prevailing rate of wages. This provision of the statute was held to be void, and the court said:

"The contractor is a private individual, engaged in private business. When he enters into a fair and honest contract for some municipal improvement, that contract is property, entitled to the same protection as any other property. It is not competent for the legislature to deprive him of the benefit of this contract by imposing burdensome conditions with respect to the means of performance or to regulate the rate of wages which he shall pay to his workmen, or to withhold the contract price when such conditions are not complied with in the judgment of the city. When he is not left free to select his own workmen upon such terms as he and they can fairly agree upon, he is deprived of that liberty of action and right to accumulate property embraced within the guaranties of the Constitution, since his right to the free use of all his faculties in the pursuit of an honest vocation is so far abridged."

In *Street v. Varney Electrical Supply Co.*, 160 Ind. 338, 66 N. E. 895, 61 L. R. A. 154, 98 Am. St. Rep. 325, an act of the Indiana legislature was in question. It provided that unskilled labor employed on any public work of the state, counties, cities and towns should receive not less than 20 cents an hour. In holding this law to be in violation of the fourteenth amendment to the Constitution of the United States,, the court said:

"If the legislature has the right to fix the minimum rate of wages to be paid for common labor, then it has the power to fix the maximum rate. And if it can regulate the price of labor, it may also regulate the prices of flour, fuel, merchandise, and land. But these are powers which have never been conceded to the legislature, and their exercise by the state would be utterly inconsistent with our ideas of civil liberty. Among the most odious and oppressive laws ever enacted by the English Parliament, in the worst of times, were the statutes of labor of Henry VI and Edward III. These enactments fixed a maximum rate of wages for the laboring man, prohibited him from seeking employment outside of his own county, required him to work for the first employer who demanded his services, and punished every violation of the statutes with severe penalties. In the very nature and Constitution of things, legislation which interferes with the operation of natural and economic laws defeats its own object, and furnishes to those to whom it professes to favor few of the advantages expected from its provisions. The circumstances that the act of March 9, 1901, (Laws 1901, c. 122), reverses the conditions of the statutes of labor of Henry VI and Edward III, and lays the burden and the penalty upon the employer instead of the laborer. Does not render it any less pernicious and objectionable as an invasion of natural and constitutional rights. Statutes similar to this have been before the courts of our states, and in nearly every instance have been held unconstitutional."

In the case of *Chicago, M. & St. P. Ry. Co. v. Westby*, 178

Fed. R. 619, the opinion of the court states the questions very plainly, and as a part of our argument we quote from the opinion the following:

"The court below overruled objections made at the trial of this case and to the charge of the court on the ground that the employer's liability law of South Dakota was unconstitutional. Prior to the act of February 20, 1907, employers in South Dakota were not liable for injuries or deaths of their employes which the latter's negligence contributed to cause nor for those caused by the negligence of their fellow servants, and this is still the general law of that state. That statute of 1907 excepted from this general law, which still governs the rights of all other masters and servants in that state, common carriers and their servants, subjected the former to, and granted to the latter, causes of action for injuries to the servants caused by the negligence of their fellow servants and for injuries to which their own negligence contributed, while no such liabilities were imposed upon other employers and no such rights were granted to other servants. The fourteenth amendment to the Constitution of the United States forbids any state to 'deny to any person within its jurisdiction the equal protection of the laws.' How may such legislation escape this inhibition? The answer is, by classification, and the concession is freely made that the legislatures of the states may lawfully classify the subjects of their laws and make provisions applicable to one class of subjects that have no application to another class. But the members of these classes may not be selected arbitrarily without just or sound reason inherent in their respective situations and circumstances relative to the subject-matter of the legislation for the difference in the burdens imposed and the privileges conferred upon them by such a discriminatory law.

"In the face of the constitutional prohibition of unequal laws, there are three indispensable conditions to a constitutional imposition of liabilities or burdens upon, or a constitutional grant of rights or privileges to, the members of one class that other members of the state do not bear or enjoy: (1) There must be such a difference between the situation and circumstances of all the members of the class

and the situation and circumstances of other members of the state in relation to the subjects of the discriminatory legislation as presents a just and natural reason of necessity or propriety for the difference made by the law in their liabilities and rights. While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification. *Gulf, Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U. S. 150, 155, 165, 17 Sup. Ct. 255, 41 L. Ed. 666; *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, 107-112, 22 Sup. Ct. 30, 46 L. Ed. 92; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 559, 22 Sup. Ct. 431, 46 L. Ed. 679; *Southern Ry. Co. v. Greene*, 216 U. S. 400, 30 Sup. Ct. 287, 54 L. Ed. —— (filed February 21, 1910); *Nichols v. Walter*, 37 Minn. 264, 33 N. W. 800; *Lavallee v. St. Paul, Minneapolis & Manitoba Ry. Co.*, 40 Minn. 249, 252, 41 N. W. 974; *State v. Loomis*, 115 Mo. 307, 314, 22 S. W. 350, 21 L. R. A. 789; *Ballard v. Mississippi Cotton Oil Co.*, 81 Miss. 507, 34 South, 533, 549, 62 L. R. A. 407, 95 Am. St. Rep. 476. (2) No person who does not belong to the class may be included therein, and all persons within the influence of the legislation relative to the class must be treated alike thereby. (3) All who are in a situation and circumstances relative to the subject of the discriminatory legislation indistinguishable from the situation and circumstances of the members of the class must be brought under the influence of the legislation and treated by it in the same way as are the members of the class.

"'An act of class legislation to stand in the face of the Constitution must include all who belong to the class—not all who bear similarity in some characteristics to those included, but all who cannot be distinguished from them in that particular characteristic which justifies the act. And it must include none who do not belong to the class.' *Sams v. St. Louis & M. R. Co.*, 174 Mo. 53, 73

S. W. 686; 691, 61 L. R. A. 475; *Johnson v. St. Paul & Duluth R. Co.*, 43 Minn. 222, 224, 45 N. W. 156, 8 L. R. A. 419; *Lodi Township v. State*, 51 N. J. Law, 402, 18 Atl. 749, 6 L. R. A. 56.

It is evident from a casual reading of the three conditions which have been stated that, if either of them be disregarded, parties within or without the legislative class must be deprived of the equal protection of the laws."

See also on the question of classification, *State v. Gautz*, 124 La. 535; *Armour & Co. v. City Council*, 67 S. E. Rep. 417; *Henry v. Compbell*, 133 Ga. 882; *Mergen v. Demce*, 46 Colo. 385.

The defendant in error in the state court contended that the act of the General Assembly of the State of Indiana, approved March 9th, 1907, was a valid exercise of the police power of the state, and begging the indulgence of this court for so doing we here insert from our brief in the Supreme Court of the State of Indiana, that part of our argument bearing upon the question in issue:

"The appellee seeks to uphold the statute upon the theory that it is a police regulation. In its broadest acceptation, the police power is the general power of a government to preserve and promote the public welfare, even at the expense of private rights.

In the case of the *New Orleans Gas Light Co. v. Hart*, 40 La. Ann. 474; 8 Am. St. Repts. 574, the following definition is given:

'Police power is the right of the state functionaries to prescribe regulations for the good order, peace, protection, comfort and convenience of the community, which do not encroach on the like power vested in Congress.'

Blackstone defines it as:

'The due regulation and domestic order of the kingdom, whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood and

good manners; and to be decent, industrious and inoffensive in their respective stations.

Constitutions are limitations upon the legislative power of the state,

People v. Draper, 15 N. Y. 532;
Page v. Allen, 58 Pa. St. 338;
Leavenworth [illegible] v. Miller, 7 Kans. 479;
Pattison v. Yuba, 13 Calif. 175.

In Tiedeman's Limitations of police power it is stated that: The legislature is clearly the department of the government which can and does exercise the police power, and consequently, in the limitations upon the legislative power, are to be found the limitations of the police power. * * * * Whenever an act of the legislature contravenes a constitutional provision it is void, and it is the duty of the courts so to declare it."

In *Lake View v. Rose Hill Cemetery Co.*, 70 Ills. 192, the doctrine is summed up as follows:

"It is the province of the law-making power to determine *when* the exigency exists for calling into exercise the police power of the state; but *what* are the subjects of this exercise is clearly a judicial question."

The preservation of public health, public morals, and the public welfare are within the legislative scope.

The Federal Constitution and the state Constitution limit the legislative power and stay the hand of the legislature from reaching beyond its proper sphere.

As was held in *Toledo, etc., vs. Jacksonville*, 67 Ills. 37; 16 Am. Rep. 611:

"The legislature cannot, under pretense of exercising this power, enact laws not necessary to the preservation of health and safety of the community that will be oppressive and burdensome upon the citizens."

The Federal Constitution provides that 'no person shall be deprived of life, liberty or property without due process

of law,' and when a police regulation contravenes this guaranty the law is void.

It is also true as to the Constitution of Indiana. And everybody is entitled to the "equal protection of the laws."

Under the pretense that there is greater safety in a "wide entry" over a narrow entry the legislature is induced by a busybody claiming to bear the request of a miners union for a "wide entry law." Instead of greater safety it causes greater danger. It cost money to make the "wide entry" and no benefit is derived by the miner. On the contrary his life is put in danger.

On a pretense of police power the legislature of Indiana enacts a law not for the safety of those who work in the mines and thereby unjustly and unconstitutionally impose a burden upon the mine owners; take from the mine owners their property without due process of law, and without compensation therefor, and thus deny to such mine owners and operators the equal protection of the laws.

In *Clark v. Mitchell*, 64 Mo. 578, it is stated, that

"Due process of law undoubtedly means, in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights. Such an act as the legislature may, in the uncontrolled exercise of its power, think fit to pass, is in no sense the process of law, designated by the Constitution."

In *Sears v. Cottrell*, 5 Mich, 254, the principle is laid down that

"By the law of the land we understand laws that are general in their operation, and that affect the rights of all alike; and not a special act of the legislature passed to affect the rights of the individual against his will, and in a way in which the same rights of other persons are not affected by existing laws."

And in *Hurtado v. People of California*, 110 U. S. 516, it is held that

'It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power.'

It overlooks the rule fully established by decisions of our higher courts, which is summed up by a learned writer thus:

'Where police regulation passed by the State in the interest of public health, morals or safety amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void. But this is only saying, in other words, that a statute which arbitrarily selects certain members of the community for regulation is not a valid exercise of the police power.'

McGee on Due Process of Law, page 308.

The act of 1907 specially excepts one class of citizens—excepts one branch of the coal industry, and casts all the burden upon another class. It is this class of legislation which should not be permitted to stand, as the courts well know the tendency of the times has been for this interest, this class, this organization or that element, as the case may be, to secure the enactment by the General Assembly of legislation for the benefit of special interests or classes, and then ask the courts to sustain it on the ground of police regulation. The court should, in decisive opinions, hold that all legislation must be general, for the benefit of all the people and for all classes of people, without preference, without distinction and with equal privileges. No act should be upheld by the judicial sanction of the courts which has for its purpose the giving to one class rights and privileges not given to all the people. There has in the last few years been great pressure brought upon our General Assemblies for class legislation, and few men indeed have had the courage to withstand the appeals made them for the enactment of such class legislation. The true history of the act of 1907, when told, would read: 'That certain interests were desirous of this legislation; the bill

for the act was prepared to include all the coal mines in Indiana; the bill was so introduced; a representative of another interest went to the parties having the contemplated act in charge, and at the request of this representative of this special interest there was added to the proposed act the *proviso* clause, exempting the block coal interests from the operation of the law.' Thus giving the *block* coal man privileges and immunities not given to other coal operators.

The act in question denies appellant, and the corporation of which he is an officer, the equal protection of the law.

Corporations are persons within the meaning of the fourteenth amendment of the Constitution giving all persons the equal protection of the law.

Santa Clara Co. v. Southern Pacific R. R., 118 U. S. 394;
Pembina Co. v. Pennsylvania, 125 U. S. 181;
Charlotte R. R. Co. v. Gibbs, 142 U. S. 386;
Covington v. Sandford, 164 U. S. 578;
Smythe v. Amos, 169 U. S. 466."

"This act is not general in its operation. In *Richardson v. Board, etc.*, 84 Pac. 538, the rule is stated to be: 'A law of a general nature is one whose subject matter is common to all the people of the State.' It is for the courts, and the courts alone, to determine what are the proper subjects for the exercise of the police power, and it is the province of the legislature to determine whether the exigency exists which calls for the exercise of the police power.

Tiedman, Pol. Power 1886, Sec. 3, pp. 12, 13;
Toledo Co. v. Jacksonville, 67 Ills. 37;
Lake View v. Rose Hill Cemetery Co., 70 Ills. 192.

Police power can only be exercised to prohibit things which are hurtful to the health, safety and welfare of society at large, and cannot be exercised for the sole and special benefit of individuals or any special class or classes of individuals.

Tiedman Pol Power, Sec. 1, page 4;
In Re Thomas v. Morgan, 26 Calf. 415.

The 'police power' can be exercised only for public objects, and not as a part of personal regimen or health. The legislature has no authority to take away a person's property.

This act of March 9, 1907, is invalid for the reason that it grants special privileges to one class of citizens; i. e., the person engaged in mining in veins three and four where block coal is found, which privilege is not granted to all the citizens of the State similarly situated. If a distinction is to be established between two classes of coal operators, then that distinction should be definitely defined by the Legislature. Not being defined, the act in question comes within the prohibition clause of the Constitution and should not be upheld.

State v. Garbroski, 82 N. W. 959;
Hawkins v. Roberts, 122 Ala. 130;
State v. Cooley, 56 Minn. 540;
State v. Haun, 61 Kan. 146;
Richardson v. Board, 84 Pac. 538;
People v. Otis, 90 N. Y. 52;
Wynehamer v. People, 13 N. Y. 378;
Cotting v. Kansas City Stock Yards Co., 183 U. S. 79;
Barbier v. Connelley, 113 U. S. 27.

Class legislation is enactments by the legislative power of the State, granting certain rights to a certain class of citizens which are not given to all citizens of the State, or prohibiting one class of citizens from doing those things which are permitted to be done by another class, without such latter class being amenable to the law of the land.

It was said in the case of *State v. Garbroski*, 111 Iowa 496, 'where for the purpose of legislation, the subjects upon which the law is to operate are divided into different classes, if the division is arbitrary, and not based upon differences which are apparent and reasonable, the laws relating to the classes thus made is called "class legislation."'

The term class legislation is properly applied to the

discriminating against some and favoring others. 'Class legislation' is the violation of the constitutional guaranty of equal protection of the laws. 'Class legislation' is legislation which selects particular individuals from a class, and imposes upon them special burdens from which others of the same class are exempt, and thus denies them the equal protection of the laws.

State v. Cooley, 56 Minn. 540.

In *State v. Hagan*, 63 O. S. 202, the court states the rule: 'The test of a statute as to uniform operation, and with respect to the required conformity to the law of the land and to the requirement of due process of law, seems to be that if the law under consideration operates equally upon all who come within the class to be effected, embracing all persons who are or may be in like situation and circumstances, and the designation of a class is reasonable, not unjust, capricious or arbitrary, but based upon a real distinction, the law does operate uniformly, and if, added to this, the law is enforced by usual and appropriate method, the requirements as to due process of law is satisfied; otherwise not.'

No reasonable person can claim otherwise than that the act under consideration is arbitrary. It singles out one industry—the largest single industry in the State of Indiana—and seeks to fasten upon it burdens which are not cast upon another industry not so large, but engaged in the same line of business. The Legislature does not undertake to define the difference or to declare a classification, but arbitrarily imposes a burden for no other reason than that it is asked for by a class of citizens of the State for the reason that in their opinion it gives them an advantage over another class.

Has the State the power to enact a law of this character? It is claimed that the Legislature could pass this act and other similar acts in the exercise of the police power which every sovereign State possesses. The police power of a State is broad and and comprehensive, and, as has been said, it is exercised to promote the health, comfort, safety and welfare of society, but this power, however broad it may be, and no matter how it has been exercised

in the past, is not above the Constitution. When the Constitution speaks in a given case, its voice and commands should be heeded. It is the supreme law, the guide of the Legislature, the guide of our judges and the guide of all private persons; and, so far as it imposes restraints, the police power must be exercised, if at all, in subordination thereto.

A learned writer (Judge Cooley), speaking of the regulation by the Legislature, under the police power of the conduct of corporations holding inviolable charters, says:

'The limit to the exercise of the police power in these cases must be this: The regulations must have reference to the comfort, safety and welfare of society; they must not be in conflict with any of the provisions of the charter, and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations in fact.'

In *Austin v. Murray*, 16 Pick 121, 126, it is said:

'The law will not allow the rights of property to be invaded under the guise of a police regulation for the promotion of health, when it is manifest that such is not the object and purpose of the regulation.'

In *Watertown v. Mayo*, 109 Mass. 315, the court say:

'The law will not allow rights of property to be invaded under the guise of police regulation for the preservation of health or protection against a threatened nuisance; and, when it appears that such is not the real object and purpose of the regulation, courts will interfere to protect the rights of the citizens.'

In the Slaughter House cases, 16 Wall 36-87, the court say:

'But, under the pretense of prescribing a police regulation the State cannot be permitted to encroach upon any of the just rights of the citizen which the Constitution intended to secure against abridgement.'

In *Coe v. Shultz*, 47 Barb. 63, the learned judge, in writing the opinion, uses the following expressive language:

'I am not willing to concede that the Legislature can constitutionally declare any act or thing to be a common

nuisance, which, palpably, according to our present experience or information, is not and cannot be under any circumstances a common nuisance, by the common law definitions or common law decisions. I am not willing to concede that the Legislature can constitutionally declare or authorize any sanitary commission or board to declare the keeping or the use, in any way, of sugar or vinegar to be a common nuisance, because the one is sweet and the other is sour, or for any other reason. By such an unlimited power it is easy to see that any citizen might be deprived of his property without compensation, and without any colorable pretext that the public good required such deprivation.'

These citations are sufficient to show that the police power is not without limitations, and that in its exercise the Legislature must respect the great fundamental rights guaranteed by the Constitution. If this were otherwise, the power of the Legislature would be above the Constitution and be practically without limitation.

Under the guise of police power and police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the Legislature is not conclusive. If the Legislature passes an act ostensibly for the public health, and thereby destroys or takes away the property of a citizen, or interferes with his personal liberty, then and in all such cases it is for the courts to scrutinize the act and see whether it in fact relates to and is convenient and appropriate to promote the public health and general welfare of all the citizens of the State.

The right to use, buy or sell property is protected by the Constitution, and, 'when the law annihilates the value of property, and strips it of its attributes, by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation, and certainly within the constitutional provision intended expressly to shield personal rights from the exercise of arbitrary power.'

Wynehamer v. People, 133 N. Y. 378.

The Legislature has no right to deprive one class of persons of privielges allowed to other persons under like conditions. The person who is forbidden to acquire and enjoy

property in the same manner in which the rest of the citizens of the State enjoy it, is deprived of liberty in particulars of primary importance to his pursuit of happiness. In line with these suggestions it has been held that it is not competent, under the Constitution, for the Legislature to single out owners and employers of a particular class and provide that they shall bear burdens not imposed on other owners of property or employers of labor and prohibit them from making contracts which other owners or employers are permitted to make.

Millett v. People, 117 Ills. 294;
Ramsey v. People, 142 Ills. 380;
Lake View v. Rose Hill Cemetery, 70 Ills. 191;
People v. Gilson, 109 N. Y. 389;
Starne v. People, 78 N. E. 61.

There is nothing in the title of the act of March 9, 1907, to indicate that the act is for the protection of health, the general welfare or the safety of the citizens of the State, and there can be but one conclusion, and that is, that the act originated in the minds of one class of citizens, and it was originally intended to apply to all persons engaged in mining coal, but the operators engaged in the mining of coal in the block coal counties secured an amendment to the original measure as introduced, exempting them from its provisions, and now they rest upon their laurels, and the State insists upon all other parts of the State and all other citizens of the State complying with the act and let the operator in the block coal field go his way without limit.

The special plea of appellant in two paragraphs clearly states the facts. The appellee having by its demurrer admitted the facts stated in each paragraph of the plea to be true, we do not see how a court can go outside the record to say that the answers do not state the facts.

The first paragraph of the plea avers that appellant, at the time alleged in the affidavit, was secretary of a corporation engaged in the mining of coal; that said coal company was the owner of the mine and was operating the same; that said coal company was mining such coal from geological vein number four and was mining no other coal, and that such company was operating in no

other vein of coal in such mine; that geological veins of coal numbers three and four are known and called in the block coal field 'upper' and 'lower' veins, and are identical, thus showing that the company represented by appellant, and of which he was an officer and director, was mining coal falling within the excepted class referred to in the act which it is claimed was violated. This was a complete defense to the charge contained in the affidavit.

The second paragraph of answer avers that Vandalia Coal Company is a corporation organized under the laws of New Jersey, and duly authorized to transact business in Indiana; that such company was the owner of a coal mine, being the mine referred to in the affidavit; that appellant was an officer and director of such corporation; that the act under which the prosecution is being urged, by its *provisa* clause, excepted from its operation geological veins numbers three and four, which veins are known in the block coal fields as 'upper and lower' veins; that at the date named in the affidavit, the coal company was operating in geological vein number four, and was operating in no other vein, and averring that the act under which the prosecution was being urged was in violation of the Constitution of the State of Indiana, stating as a reason that such act gives the operator engaged in the mining of coal in geological veins three and four, and known in the block coal fields as upper and lower veins, rights and privileges not given or granted to other persons in the mining of coal, and further averring that such act was not uniform in its operation in the State, and that such act was in violation of the Constitution of the United States for the reason therein set forth.

As before stated, the appellee's demurrer admitted each and all these averments, and it cannot be that the courts will brush the facts admitted aside and say that the appellant has no constitutional rights that should be protected. It is not of the amount of the penalty assessed against the appellant we complain, but it is that his constitutional rights have been invaded, burdens have been cast upon the corporation of which he is an officer which are not placed upon or enforced against other persons

engaged in the same line of business. An unjust, unfair and arbitrary classification is attempted, not in words, but by inference. There is no declaratory classification of the coal fields of Indiana; there is nothing to show a necessity for any distinction; and the answers of appellant being before the court, the true facts and conditions fully shown, and it is for the court to say whether the act should stand or fall.

Mr. Webster, in his argument in the Dartmouth College case, used the following expressive language:

'By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not therefore to be considered the law of the land. If this were so, acts of atttainder, bills of pains and penalties, acts of confiscation, acts reversing judgments and acts directly transferring one man's estate to another; legislative judgments, decrees and forfeitures, in all possible forms, would be the law of the land. Such strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the Legislature. There would be no general permanent law for the courts to administer or for men to live under.'

The conception of law is opposed to all merely arbitrary or capricious action on the part of the State depriving individuals of life, liberty or property.

Under the American theory of constitutional government, in which the Constitutions are a restraint even on the Legislature, the idea has a fruitful development. Purely arbitrary decrees or enactment of the Legislature directed against individuals or classes are held not to be the 'law of the land,' or to conform to 'due process of law.'

In the case of *Conolly v. Union Sewer Pipe Company*, 184 U. S. 540-560, the court say:

'The difficulty is not met by saying that, generally speak-

ing, the State, when enacting laws, may, in its discretion, make a classification of persons, firms, corporations and associations in order to subserve public objects. For this court has held that classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis. *But arbitrary selection can never be justified by calling it classification.* The equal protection demanded by the fourteenth amendment forbids this. No duty rests more imperatively upon the courts than the enforcement of these constitutional provisions intended to secure that equality of right, which is the foundation of free government.

It is apparent that the mere fact of clasisfication is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and not a mere arbitrary selection.' (Page 562.) 'A State may in its wisdom classify property for the purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States. But different considerations control when the State, by legislation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade.

In prescribing regulations for the conduct of trade, it cannot divide those engaged in trade into classes and make criminals of one class, if they do certain forbidden things, while allowing another and favored class engaged in the same domestic trade to do the same things with impunity. It is one thing to exert the power of taxation so as to meet the expenses of the government, etc. * * * It is quite a different thing for the state, under its general police power, to enter the domain of trade or commerce and discriminate against some by declaring that particular

classes within its jurisdiction shall be exempt from the operation of a general statute, making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exercise of the power of classification; rests upon no reasonable basis; is purely arbitarary, and plainiy denies the equal protection of the laws to those against whom it discriminates.'"

We repeat in this court the arguments so made in the Supreme Court of the State of Indiana and believe this court will give this case such consideration as it may be entitled to and with an abiding faith in the courts and judges that justice will be administered impartially, speedily and without delay, the plaintiff in error now submits his case.

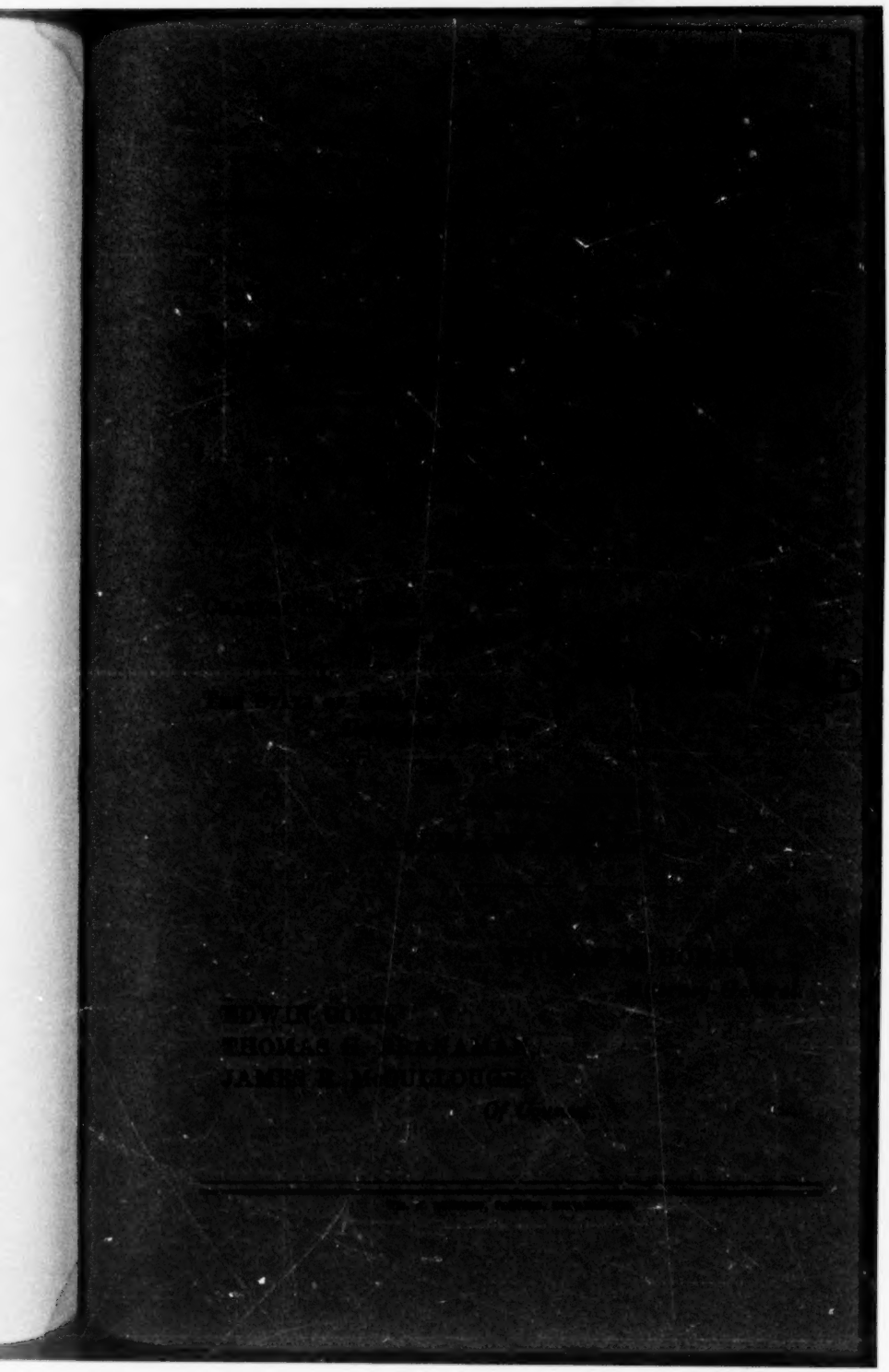
Respectfully submitted,

CHARLES E. BARRETT,

Plaintiff in Error.

JOHN C. CHANEY,
CHARLES E. BARRETT,

Attorneys.



OR COPY

IN THE

Supreme Court of the United States

IN ERROR FROM THE SUPREME COURT OF THE STATE OF INDIANA.

CHARLES E. BARRETT,
Plaintiff in Error,
v.
THE STATE OF INDIANA,
Defendant in Error.

No. 949.

APPELLEE'S BRIEF.

This is an appeal from a judgment of the supreme court of the State of Indiana, affirming a judgment of the Sullivan Circuit Court, convicting plaintiff in error of a violation of a statute requiring entries to certain coal mines to be of not less than a certain width. The case was twice in the supreme court of Indiana—*State* v. *Barrett,* 172 Ind. 169, *Barrett* v. *State,* 93 N. E. Rep. 543. It is from the judgment in the latter case that this appeal is prosecuted.

The law which plaintiff in error was charged with violating is set out in full in appellant's brief, and we will not repeat it here.

The brief of plaintiff in error contains assertions that are certainly not shown by the record. Counsel say, "This cause comes to this court as a result of the demands of certain so-called labor organizations appealing to the Legislature and securing the enactment of certain laws demanded by them." And again, "That the sole and only purpose of such legislation was to obtain an advantage over the financial man who owns and operates a mine." Counsel also charge that such legislation was enacted for the purpose of forcing the operators of mines to employ additional labor in making wide entries and protecting the same. None of these matters are shown by the record. Certainly such unworthy motives are not to be attributed to the members of the General Assembly of the good State of Indiana. Shall we not rather conclude that such legislation was enacted to protect the life and health of those who are engaged in a dangerous employment. This court, however, is not particularly concerned about the reasons for the enactment of this law. Its only duty is to pass upon its constitutionality.

The statute under which plaintiff in error was prosecuted, was intended to safeguard the drivers of cars used in hauling coal in the mines. The block coal field is one in which the roof of the mine is always low, and the average number of employes per mine is less than in the

bituminous field, as shown by the Indiana State Mine Inspector's reports. The block coal field is old and well worked, and the General Assembly of Indiana, being familiar with its history, and its condition, at the time of the passage of the law, considered that there was sufficient difference between the two fields to warrant the exemption of the one and the inclusion of the other within the operation of this law. It knew that the bituminous mines did a larger business in proportionately a less number of mines. This meant very evidently more work and greater danger in the bituminous mines. They could reasonably anticipate that there was less invitation to carelessness in the block mine than in the bituminous, as the height of roof would keep caution alive at all times. In many of the bituminous mines the roof is high enough to permit an ordinary man to walk erect throughout an entry. The same results could not be attained in the block field, by the expenditure of an equal amount of labor or money; and the danger in such mines being less the Legislature had the right to draw a line of demarcation between the two fields.

There was no thought of exempting any but block mines. They all occur in the two veins 3 and 4, but there are a great many bituminous mines in the same veins. Difference in the quality of the coal makes the difference in the field, the block being a harder, better coal. The bituminous mines in these same veins, like the bituminous mines in other veins, run over five feet in average thickness of the coal seams, and there are no practical differ-

ences to distinguish them from other bituminous mines in other veins. It would not have been a proper classification to have set off one vein of bituminous mines against another similar vein of mines, and such was not done. Had such been intended there would be no use of the words "commonly known as the lower and upper veins in the block coal fields of Indiana," in the proviso, because they would not be needed, and because they would not aptly describe any condition existing outside of the block fields. Veins 3 and 4, being the only block veins, are known in the block field as lower and upper. But veins 3, 4, 5, 6 and 7 are all worked for bituminous coal.

As the questions presented on this appeal were considered by the supreme court of Indiana, on the first appeal of this case to that court, we can not better present the side of defendant in error in this case than to adopt a large portion of that opinion as a part of our brief in this case:

"The State urges here, first, that the plea or answer is bad in that it does not disclose that the mine is in the block coal field, or devoted in whole or in part to mining block coal; that, of two or more possible constructions, that one is preferable which will rescue the act from unconstitutionality, and that the proviso of the act is a constitutional exemption when applied solely to the block coal fields, because of natural distinctions upholding that classification. It may be premised that, of two or more possible constructions of a statute, that one will be adopted, if reasonable, which will rescue the act from unconstitutionality. *State* v. *Lowry* (1906), 166 Ind. 372, 4 L. R. A. (N. S.) 528.

"Also, that if the elimination of an invalid portion of an act will leave the remainder complete in itself, sensible and capable of being executed against all alike, the remainder will be enforced. *Swartz* v. *Board, etc.* (1902), 158 Ind. 141; *Smith* v. *McClain* (1896), 146 Ind. 77; *City of Indianapolis* v. *Bieler* (1894), 138 Ind. 30.

"The negative of all provisos, exceptions or exemptions in the clause defining the offense, which are affirmative elements in the offense, must be averred. But if the offense is defined without the proviso or exception, and even though in the same section with the enacting clause or clause creating the offense, it does not require negation. 1 Bishop, Crim. Pros. (4th ed.), Secs. 636-639. An examination of our cases will disclose that they all fall within the foregoing rules of construction.

"It must be conceded that the act is complete without the proviso, that the latter may be eliminated without impairing or affecting the operation of the act as a whole, that it would still be complete in itself and capable of being executed and of general operation, and that being true, the act is not open to the objection of being unconstitutional as an entirety unless it be that the proviso is so intimately connected with the enacting clause as clearly to indicate that it was intended to restrain its operation. We are required as a primary rule of construction to put ourselves in the position of the Legislature in the enactment of statutes, and endeavor to arrive at its intention. Provisos and exceptions are similar. They are intended to restrain the enacting clause, to except something which would otherwise be within it, something engrafted upon a preceding enactment, intended to take special cases out of a general class, and the general intent and purpose of an enacting clause will be controlled by the particular intent subsequently expressed. Bishop, Crim. Proc. (4th ed.), Secs. 636-639.

"Taking the enacting clause and the proviso together, what are we to understand that the Legislature intended? Clearly that the enacting clause should not apply in any way to 'geological veins of coal numbers three and four commonly known as the lower and upper veins in the

block coal fields.' The particular designation of the veins in the block coal fields discloses the reasons operating in the minds of the legislators. The relation of the proviso to the enacting clause and the subject-matter of each must make it quite manifest that the enacting clause was not intended to be operative as to any class of coal mining, unless the block coal fields were not embraced, and we must conclude that the act was intended to be applicable in its entirety, so as to exclude the block fields, or not at all, and the case is reduced to the proposition whether this classification was a proper one, and this question must be determined by the further inquiry whether it operates alike, and is of general operation as to all citizens similarly affected. Is it based upon differences which are apparent or reasonable? Does it impose burdens from which others of the same class are exempt, or apply to all persons placed in the same or like situations or circumstances, and operate equally upon all who come within the class to be affected, or is it an arbitrary or capricious division or selection of classes, without regard to those requisites of uniform operation, which so broad a power as the police power can not deny?

"It is contended by the State that one of the distinctions upon which this classification is properly based is the difference in thickness of the bituminous veins, and the block veins, the latter being an everage of less than four feet in thickness, while the bituminous veins average over five feet, and upon the difference in the number of persons employed in the two fields; that in 1906 thirty-five block mines in the State, with 1,978 employes, produced a total of 746,760 tons of coal, while 175 mines, with 18,286 employes, produced 10,675,357 tons of bituminous coal.

"Part of the duties belonging to the inspector of mines is to ascertain and report the number and thickness of the veins of coal now, or hereafter, to be worked, and their respective depths below the surface; the kind or quality of coal, how mined, whether by shaft, slope or drift; the number of mines operated in each county, the owners thereof, number of men employed in each, the

aggregate yearly production, an estimate of the capital employed, etc., and report to the State Geologist annually, and he in turn, to the Governor. (Secs. 8590-8593, 9338 Burns 1908, Acts 1905, p. 65, Secs. 20-23, Acts 1889, p. 14, Sec. 9.) These statistics are official public documents, and we take judicial notice of them. *Cary* v. *State* (1884), 76 Ala. 78; *Underhill* v. *Hernandez* (1897), 168 U. S. 250, 18 Sup. Ct. 83, 42 L. Ed. 456; *Kirby* v. *Lewis* (1889), 39 Fed. 66.

"We therefore take notice of the different geological veins of coal in each county, and, in addition to the statistical matters heretofore stated, of the relative depths from the surface of the earth, and know that block coal is found at less than one-half the average depth of bituminous coal.

"We find the geological strata numbered from one, the lowest, to seven, the highest one. We find block coal only in strata No. 3 and No. 4, known as lower and upper block, but we find bituminous coal in all the strata. In Clay County the bituminous veins—a term applied to the field—are No. 3, No. 4, No. 5 and No. 6. Upper and lower block are not the same as No. 3 and No. 4 bituminous. The average depth from the surface of the block field in the eastern part of Clay County is less than ninety feet, and the average depth in the bituminous field in the western part of that county is about seventy-five feet. In Sullivan County the average depth of the bituminous veins is more than 165 feet. It will thus be seen that the matter can not be determined upon the mere basis of the geological strata.

"The learned counsel for appellee say: 'This court will readily understand that if, for illustration, in Clay County, there are but two workable veins of coal, and they are geological veins No. 3 and No. 4, but known in that county as upper and lower veins, and down in Knox County there are two workable veins of coal, the same class of coal, but such coal is in geological veins No. 5 and No. 6, then, under the act under consideration, the Clay County operator does not come under the law, as he is exempted by its provisions, but the Knox County oper-

ator must comply with the statute, and therefore the Clay County operator is saved an expense each year in the driving of these extra wide entries; a burden is cast upon one operator, while the operator in the same line of business and having the same conditions, but working a coal known in the block field as upper and lower veins, and generally classed as geological veins No. 3 and No. 4, is exempted.' We do not think counsel put the matter fairly.

"We can not take notice that the geological veins No. 3 and No. 4 in Clay County are the same kind of coal as No. 5 and No. 6 in Knox County, for it is a matter of common knowledge that there is a recognized difference between the two kinds of coal. Number 3 and No. 4 in Clay County contain bituminous coal, and in the same strata in other parts of said county are the upper and lower block veins, while in Knox County, as in Clay, veins No. 5 and No. 6 are bituminous. Veins No. 5 and No. 6 in Clay and Knox counties are bituminous, and in Greene County, without any block veins, bituminous coal is the only coal mined. It is thus manifest that the conditions under which the two kinds of coal are found and mined are quite different in the same county, and in the same geological strata.

"The statute makes the distinction or exemption apply to block mining only, so that the act applies to all bituminous fields alike. Is it then an arbitrary or capricious classification to require conformity to the act by the bituminous operators and not by the block operators? The rule of equal protection of law only requires that persons similarly situated shall be treated alike, or that the law shall be applicable alike to all who are in the same class. Equal protection of the law in each particular case means such an exercise of powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one being dealt with belongs. 2 Story, Constitution (5th ed.), Sec. 1945.

"The Legislature evidently had in mind that there

were greater hazards in operating bituminous than block mines, and it has the power to protect its citizens in their health and safety. It is a very high power, but one justly exercisable, and one which the Legislature can not alienate. *Cleveland, etc., R. Co.* v. *Harrington* (1892), 131 Ind. 426.

"The Legislature had the right, and we must presume exercised it, of learning for itself the reasons which impelled it to act, and we can not say that it did not find substantial reasons for its conclusions. Unless we can say that the act is unreasonable, we would not be authorized to overthrow it, for a very large measure of authority is vested in the Legislature upon that subject. *McLean* v. *Arkansas* (1909), 211 U. S. 539, 29 Sup. Ct. 206; *Parks* v. *State* (1902), 159 Ind. 211, 59 L. R. A. 190; *Chandler Coal Co.* v. *Sama* (1908), 170 Ind. 623.

"It was said by this court in *Indiana R. Co.* v. *Calvert* (1907), 168 Ind. 321, 10 L. R. A. (N. S.) 780: 'Rights for the most part are relative, and the mere fact that a statute or ordinance which may reasonably be regarded as conducive to the welfare of the public, regulates a trade or business or lays some burden upon it, does not render it unconstitutional.' The following cases are in point: *Slaughterhouse Cases* (1872), 16 Wall. 36, 21 L. Ed. 394; *Munn* v. *Illinois* (1876), 94 U. S. 113, 24 L. Ed. 77.

"It may very properly be said that mining coal is a matter in which the public has a two-fold and vital interest; one the production of a highly necessary commodity, and the other the preservation of health, life and limb. That it is a private enterprise is immaterial. It is also affected with the public interests. 'Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. * * * For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us, the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void because in excess of the leg-

islative power of the State. But if it could, we must presume that it did. Of the propriety of legislative interference within the scope of the legislative power, the Legislature is the exclusive judge.' *Munn* v. *Illinois, supra.* Classification according to the character of mines, and the character of coal mined, and those giving off certain dangerous gases, has been held valid. *State* v. *Murlin* (1897), 137 Mo. 297, 38 S. W. 923.

"In *Holden* v. *Hardy* (1897), 169 U. S. 366, the court upheld the constitutionality of the act limiting the hours of labor in underground mines and smelting works, solely upon the ground of the unwholesomeness of the labor. In *Davis Coal Co.* v. *Polland* (1902), 158 Ind. 607, 92 Am. St. 319, the court, in passing upon a statute requiring certain safeguards for employes of coal mines, said, in substance: 'Employments differ as to hazards; each has its separate dangers which must be guarded against in an appropriate way. To classify legislation by distinctions that naturally inhere in the subject-matter is not to indulge in class legislation. A law is general and uniform, if all persons in the same circumstances are treated alike. The provisions with respect to the operations of mines in the various States for the protection of health, life and limb are extensive and varied, and yet their constitutionality is scarcely questioned.' Another familiar example is that of fire-escapes and fire appliances upon hotels, theatres, and other buildings above certain heights in which people congregate or labor, and in the requirements for guarding machinery. The classification of cities by population for the purpose of different local self-government, though the difference may consist only in a few less than the classification, is upheld. *Evansville, etc., R. Co.* v. *City of Terre Haute* (1903), 161 Ind. 26; *Campbell* v. *City of Indianapolis* (1900), 155 Ind. 186; *City of Indianapolis* v. *Navin* (1898), 151 Ind. 139, 41 L. R. A. 337.

"Legislative regulation of the use of private property must be presumed to be reasonable and necessary, unless the contrary appears from facts of which the courts will take notice, and the constitutional right of the citi-

zen to use his property without regulation is plain, unless the public health or protection to life and limb requires that such use be regulated; but if such business to the legislative mind, requires regulation, the private right must yield. The case of *State* v. *Richcreek* (1906), 167 Ind. 217, 5 L. R. A. (N. S.) 874, 119 Am. St. 491, and cases cited, are instructive and in point here. It is true that the Legislature may not, even under the police power, exercise purely arbitrary authority, but every one holds his property and its use under the implied obligation that the use shall not be injurious to a community, or detrimental to health, or a hazard to the safety of those employed in its use.

"Suppose we had a case where the mining of bituminous coal was carried on many hundreds of feet below the surface instead of less than an average of one hundred feet in case of block coal, could it be contended that the greater precautions to protect life, health and limb could not be imposed on the deep mine operators, as to light ventilation, means of escape and the like, than in case of those of the lesser depth? We think not.

"That being true, the case before us is one differing only in degree, and not in kind.

"It is not unlikely that there is in fact a difference in the degree of danger in mining the two kinds of coal. We at least cannot say the contrary. If so it must be presumed that the Legislature informed itself upon that subject. It may be that mining coal at a distance of 165 feet from the surface is more hazardous than mining it at 90 feet. These matters, with the relative output, relative number of mines and persons employed, may have entered into the consideration as requiring the act in one case, and not in the other, and while the relative number of employes, mines and the output might not be a proper classification if applied to persons in the same class of work, or under the same conditions, we can not say that they are not different at different depths and in different kinds of coal, and must presume that they are; at least we can not say that, as applied to all persons alike employed in mining bituminous coal, the act is invalid

because not applicable to block mining, and we can not say that the act is unreasonable, or determine as to its propriety or impropriety, and to doubt its constitutionality is to resolve in favor of its constitutionality."

Counsel for plaintiff in error in their brief say on page 24, "If the State under the guise of the exercise of its police power may determine the width of an entry in a coal mine situate upon a man's own property, it has the same right to fix a price per ton on the coal mined; it would have the right to say that no miner engaged in a mine should be paid less than a fixed sum per day, or a fixed sum per ton for coal mined." In fixing the price per ton upon coal mined or the wages which persons engaged in mining coal shall receive, the public health, morals, or safety is in no way involved. Hence these do not come within the legitimate scope of the police power. But the right to decide the kind of entries which coal mines shall have for the protection and safety of the miners, comes clearly within the police power. "The police power of the State is broad and plenary in its effect, embracing its whole system of internal regulation. It embraces all regulations designed to promote the public health, morals or safety. Its scope and those things it operates on specifically increase with the increasing development of the resources of the State. The passing of our forests and the development of industry make the development of our coal deposits necessary and desirable. Necessity for the proper regulation of operations of such mines results for the protection of those who work therein, and such regulation is too clearly within

the police power to be questioned." In the case of *Heath & Milligan, etc., Co.* v. *Worst,* 207 U. S. 338, this court said:

"Legislation which regulates business may well make the distinction depend upon the degree of evil, without being arbitrary or unreasonable or in conflict with the equal protection provisions of the fourteenth amendment of the federal constitution."

In the case of *Gundling* v. *Chicago,* 177 U. S. 183, the court said:

"Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police power by the State, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are necessarily and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass and they form no subject for Federal interference."

In the case of *St. Louis Consolidated Coal Co.* v. *Illinois,* 185 U. S. 203, this court said:

"Another question is whether the act as amended in 1897 in so far as it discriminates as to penalties imposed upon some persons engaged in the mining business, and not upon others, is a proper exercise of police power. It is true that the act of 1897 amended the former law of 1895 by limiting its application to coal mines where more than five men are employed at one time. This is a species of classification which the Legislature is at liberty to adopt, provided it be not wholly arbitrary or unreasonable."

13

The court held in that case that there was clearly reasonable foundation for a discrimination.

In the case of *McLean* v. *Arkansas*, 211 U. S. 539, it was contended that a statute of the State of Arkansas, which placed certain restrictions on all coal mines employing ten or more miners, was unconstitutional under the equal protection clause of the Fourteenth Amendment to the Constitution. This court upheld the constitutionality of the statute. In the opinion in that case, the court used the following language:

"The Legislature being familiar with local conditions is primarily the judge of the necessity of such enactments. The mere fact that a court may differ with the Legislature in its views of public policy, or that the judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. If the law has a reasonable relation to the protection of the public health, safety or welfare, it is not to be set aside because the judiciary may be of opinion that the act will fail of its purpose, or because it is thought to be an unwise exertion of the authority vested in the legislative branch of government."

If the Legislature of a State may regulate the operation of coal mines within such State, by placing restrictions on the working of mines which are operated where ten or more men are employed, which are not placed upon those where less than that number are employed, it is certainly within the power of a Legislature to enact a law placing different restrictions upon the operation of mines, where the conditions under which the two kinds

of coal are found and mined are quite different. Restrictions placed upon mines which mine bituminous coal, which are not placed on those mines which mine block coal under different conditions, is a valid exercise of the police power.

Plaintiff in error has not been deprived of his property without due process of law, but has merely had impressed upon it a regulation which the Legislature of the State of Indiana in its discretion deemed wise.

We ask that the judgment appealed from be affirmed.

Respectfully submitted,

THOMAS M. HONAN,
Attorney-General.
Attorney for Defendant in Error.

EDWIN CORR,
THOMAS H. BRANAMAN,
JAMES E. McCULLOUGH,
Of Counsel.

BARRETT *v.* STATE OF INDIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

No. 245. Submitted April 18, 1913.—Decided May 26, 1913.

Coal mining is a dangerous business and subject to police regulation by the State.

The legislature of the State is itself the judge of means necessary to secure the safety of those engaged in a dangerous business, and only such regulations as are palpably arbitrary can be set aside as violating the due process provision of the Fourteenth Amendment.

The equal protection provision of the Fourteenth Amendment requires laws of like application to all similarly situated, but the legislature is allowed wide discretion in the selection of classes.

A classification, in a police statute regulating operations in coal mines including bituminous coal mines and excluding block coal mines, is not so unreasonable or arbitrary as to justify the courts in overruling the legislature.

It is the province of the legislature to make the laws and of the court to enforce them.

Courts will not interfere with a police statute on the ground that the classification is so arbitrary as to deny equal protection of the laws unless it appears that there is no fair reason for the law that would with equal force not require its extension to others whom it leaves untouched. *Missouri, Kansas & Texas Ry.* v. *May*, 194 U. S. 267.

The statute of Indiana requiring entries in coal mines to be of a specified width was a reasonable exercise of the police power of the State in regulating a dangerous business and is not unconstitutional under the Fourteenth Amendment either as depriving the owners of bituminous coal mines of their property without due process of law or as denying them equal protection of the law because it expressly excepts block coal mines.

93 N. E. Rep. 543, affirmed.

THE facts, which involve the constitutionality under the Fourteenth Amendment of the statute of Indiana prescribing the width of entries in bituminous coal mines, are stated in the opinion.

Mr. John C. Chaney and *Mr. Charles E. Barrett* for plaintiff in error:

The act of March 9, 1907, is in conflict with § 1 of the Fourteenth Amendment. It denies the equal protection of the law to the person or persons engaged in the mining of coal in certain districts of the State. It grants special privileges to another class of citizens engaged in mining coal in what is known as the block coal district, and denies these privileges to all other persons. *Chicago, M. & St. P. Ry. Co.* v. *Westby*, 178 Fed. Rep. 619; *Bells Gap R. R. Co.* v. *Pennsylvania*, 134 U. S. 232, 237; *Gulf &c. R. R. Co.* v. *Ellis*, 165 U. S. 150, 159; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 359; *Cotting* v. *Kansas City Stock Yards*, 183 U. S. 79; *Barbier* v. *Connolly*, 113 U. S. 27, 31; *Santa Clara Co.* v. *Southern Pacific*, 118 U. S. 394; *Pembina Co.* v. *Pennsylvania*, 125 U. S. 181; *Charlater R. R. Co.* v. *Gibbs*, 142 U. S. 386; *Covington* v. *Sandford*, 164 U. S. 578; *Smythe* v. *Ames*, 169 U. S. 466; Tiedeman, Pol. Powers (1886), § 3; *Toledo Co.* v. *Jacksonville &c.*, 67 Illinois, 37; *Lake View* v. *Rose Hill Cemetery*, 70 Illinois, 192; *Southern Ry. Co.* v. *Greene*, 216 U. S. 400.

Appellant in the operation of his coal mine fell within the exception or proviso clause of the act. The act of 1907 is class legislation, and appellant is, by its terms, denied the equal protection of the law. *Greene* v. *State*, 119 N. W. Rep. 6.

Mr. Thomas M. Honan, Attorney General of the State of Indiana, *Mr. Edwin Corr*, *Mr. Thomas H. Branaman* and *Mr. James E. McCullough* for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

The plaintiff in error was convicted in a Circuit Court of Indiana of the violation of a statute of that State requiring entries in certain coal mines to be of not less than a pre-

scribed width. The case was twice before the Supreme Court of Indiana. *State* v. *Barrett*, 172 Indiana, 169; *Barrett* v. *State*, 93 N. E. Rep. 543. From the judgment in the latter case, affirming the conviction, a writ of error was prosecuted. The assignments of error raise the question of the validity of the statute under the Fourteenth Amendment to the Constitution of the United States.

The statute provides (Burns' Annotated Indiana Statutes, 1908):

"8582. Width of entries.—1. That it shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana, to make, dig, construct, or cause to be made, dug or constructed any entry or trackway after the taking effect of this act, in any coal mine in the State of Indiana where drivers are required to drive with mine car or cars unless there shall be a space provided on one or both sides continuously of any track or tracks measured from the rail, in any such entry of at least two (2) feet in width, free from any props, loose slate, debris or other obstruction so that the driver may get away from the car or cars and track in event of collision, wreck or other accident. It shall be unlawful for any employé, person or persons to knowingly, purposely or maliciously place any obstruction within said space as herein provided: Provided, That the geological veins of coal numbers three and four commonly known as the lower and upper veins in the block coal fields of Indiana shall be exempt from the provisions of this act."

The next section provides that any one violating the act shall be guilty of a misdemeanor and prescribes the penalty.

That the legislatures of the States may in the exercise of the police power regulate a lawful business is too well settled to require more than a reference to some of the cases in this court in which that right has been sustained as against objections under the Fourteenth Amendment.

Gundling v. *Chicago*, 177 U. S. 183; *Jacobson* v. *Massachusetts*, 197 U. S. 11; *McLean* v. *Arkansas*, 211 U. S. 539; *Williams* v. *Arkansas*, 217 U. S. 79; *Watson* v. *Maryland*, 218 U. S. 173; *Schmidinger* v. *City of Chicago*, 226 U. S. 578. That the mining of coal is a dangerous business and therefore subject to regulation is also well settled. It is an occupation carried on at varying depths beneath the surface of the earth, amidst surroundings entailing danger to life and limb, and has been, as it may be, the subject of regulation in the coal mining States by statutes which seek to secure the safety of those thus employed. The legislature is itself the judge of the means necessary and proper to that end, and only such regulations as are palpably arbitrary can be set aside because of the requirements of due process of law under the Federal Constitution. When such regulations have a reasonable relation to the subject-matter and are not arbitrary and oppressive, it is not for the courts to say that they are beyond the exercise of the legitimate power of legislation. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61.

We are unable to say that the requirement that entries shall have a certain width beyond the tracks, as prescribed by this statute, would not promote the safety of the employés engaged in that work. The legislature found, for reasons sufficient to itself, that such additional width, kept clear of obstructions, would promote the safety of the exployés, and we are not prepared to say that in enacting such legislation it violated the Federal Constitution.

It is argued that the act in question is also violative of the equal protection clause of the Fourteenth Amendment, in that it applies to bituminous coal mines but not to block coal mines. The equal protection of the laws requires laws of like application to all similarly situated, but in selecting some classes and leaving out others the legislature, while it keeps within this principle, is, and may be,

allowed wide discretion. It is the province of the legislature to make the laws and of the courts to enforce them. This court has had such frequent occasion to consider this matter that extended discussion is not necessary now. The legislature is permitted to make a reasonable classification and before a court can interfere with the exercise of its judgment it must be able to say "that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched." This was one test laid down in *Missouri, Kansas & Texas Ry. Co.* v. *May*, 194 U. S. 267, and has been quoted and followed with approval in *Williams* v. *Arkansas, supra;* and *Watson* v. *Maryland, supra.* In noticing this contention the Supreme Court of Indiana, when the case was first before it, 172 Indiana, 169, reviewed the situation in that State, as evidenced by official reports concerning the coal mining industry, and noted the great difference in the production and number of mines between what are called the block veins of coal and the bituminous veins of coal existing in the State, and also the different depths at which coal is mined in the strata of block and bituminous coal, and concluded its discussion of this subject, as follows:

"It is not unlikely that there is in fact a difference in the degree of danger in mining the two kinds of coal. We at least cannot say the contrary. If so, it must be presumed that the legislature informed itself upon that subject. It may be that mining coal at a distance of 165 feet from the surface is more hazardous than mining it at 90 feet. These matters, with the relative output, relative number of mines and persons employed, may have entered into the consideration as requiring the act in one case, and not in the other, and while the relative number of employés, mines and the output might not be a proper classification if applied to persons in the same class of work, or under the same conditions, we cannot say that

they are not different at different depths and in different kinds of coal, and must presume that they are; at least we cannot say that, as applied to all persons alike employed in mining bituminous coal, the act is invalid because not applicable to block mining, and we cannot say that the act is unreasonable, or determine as to its propriety or impropriety, and to doubt its constitutionality is to resolve in favor of its constitutionality."

This is a reasonable disposition of the matter, and we concur in the conclusion reached by the Supreme Court of Indiana in this respect. We are unable to say that the application of the law to bituminous coal mines and the omission of block coal mines was such arbitrary discrimination as to render the act unconstitutional.

We find no error in the judgment of the Supreme Court in affirming the conviction, and it is

Affirmed.